



- iv. An award for maximum compensation for unfair termination being Kshs. 13,875,800.00 as particularized in Paragraph 10 (f) of the Claim.
  - v. Costs of this suit
  - vi. Interest in (i), (ii), and (iii) above at court rate
2. The Respondent entered an appearance on 13<sup>th</sup> September, 2019, and subsequently filed a Memorandum of Defence dated 16<sup>th</sup> September, 2019, in response to the Claimant's claim.
  3. The Claimant's case was first heard on 2<sup>nd</sup> March, 2023, before Justice Rika, when the Claimant (CW1) testified in support of his case, but was stood down before the end of cross-examination and ordered to supply the court with his bank Statements for the period July to October 2017. The hearing continued on 18<sup>th</sup> March, 2025, before this court and concluded on 6<sup>th</sup> October, 2025, with re-examination of the Claimant and the hearing of the Respondent's case.
  4. Submissions were received from both parties.

### **The Claimant's case**

5. The Claimant's case is that at all material times to this suit, he was an employee of the Respondent on contract whose employment was unlawfully and or unfairly terminated under the pretext of redundancy.

6. The Claimant avers that he was offered employment by the Respondent through a letter dated 22<sup>nd</sup> March 2007, to serve as an Applications Sales Representative starting 16<sup>th</sup> April 2007. He avers that the said position carried a gross annual income of USD 82,000, payable in Kenyan Shillings, consisting of a fixed salary of USD 35,000, a variable income of USD 35,000 based on performance targets, and a transport allowance of USD 12,000, both paid monthly in arrears.
7. The Claimant avers that he served the Respondent diligently and loyally for 10 years until 21<sup>st</sup> July 2017, when his employment was terminated on grounds of redundancy. He contends that the termination was unlawful, as it did not comply with the substantive and procedural requirements under Section 40(1) of the Employment Act.
8. It is his case that throughout his employment, he dedicated his full time and effort to his duties, consistently meeting and often exceeding performance targets, and that his work was regularly appraised as outstanding by his reporting manager.
9. The Claimant states that during his employment, he progressed through the ranks and was promoted to Senior Sales Manager for the East Africa Cluster, as evidenced by his appraisal and promotion records.
10. It is his case that on 21<sup>st</sup> July 2017, the Respondent unlawfully and unfairly terminated his employment under

the guise of redundancy, citing a business restructuring toward a cloud-based sales model, which restructuring allegedly rendered his role redundant. The Claimant contends that the redundancy was merely a pretext and part of a targeted scheme to terminate Kenyan employees, amounting to discrimination and to the Respondent's failure to act in accordance with justice and equity.

11. The Claimant states that in the termination letter dated 21<sup>st</sup> July 2017, the Respondent falsely represented that his terminal dues under Section 40(1) of the Employment Act would be paid by 30<sup>th</sup> August 2017, despite having no intention of doing so, which caused him significant hardship. He further contends that the redundancy was not genuine, as the Respondent subsequently recruited for cloud-related roles that he was qualified to fill, rendering the reason for termination invalid and substantively unfair.
12. The Claimant further asserts that the Respondent failed to follow the lawful redundancy procedure under Section 40, including the non-payment of terminal dues, thereby making the termination both procedurally and substantively unfair.
13. The Claimant asserts that the Respondent failed to notify the Labour Office of the intention to declare redundancies as required under Section 40(1)(b) of the Employment Act, rendering the redundancy process procedurally unfair. He further states that prior to the termination, the Respondent issued a Notice of Proposed Redundancy dated 20th June 2017, indicating an intended restructuring of his role, but

contends that this was misleading, as the decision to terminate his employment had already been predetermined. This, he avers, is evidenced by the Respondent's directive that he should not report to work, and instead use the time to seek alternative employment.

14. The Claimant maintains that he was aggrieved by the Respondent's actions, which he alleges were carried out without valid reasons, in breach of his contract, the Employment Act 2007, the Constitution of Kenya 2010, and principles of fair labour practices.

15. The Claimant avers that the termination failed to comply with the procedural requirements under Sections 40 and 41 of the Employment Act and was therefore discriminatory, unlawful, unfair, and wrongful.

16. The Claimant states that his termination left him jobless without regard for his family responsibilities and financial obligations, such as loans and rent, causing him significant loss and hardship. He argues that this violated his constitutional right to fair labour practices under Article 41 of the Constitution of Kenya, 2010.

17. He further contends that, given his senior position, years of service, and experience, he was entitled to fair and just treatment, but instead, he contends that the Respondent treated him in a cruel, inhuman, and degrading manner, contrary to his legitimate expectations.

18. The Claimant maintains that his termination was carried out maliciously and in bad faith, aimed at frustrating and humiliating him as a Kenyan employee. He also asserts that the Respondent's refusal to pay his terminal dues was intended to prolong his suffering.

19. The Claimant asserts that his wrongful and unfair termination, in violation of his employment contract, the Human Resource Policy Manual, the Employment Act, and Article 41 of the Constitution of Kenya, 2010, entitles him to damages. He states that he seeks a court order compelling the Respondent to compensate him for the injustices suffered.

20. He further maintains that the alleged redundancy was not proven, as the Respondent failed to provide evidence to justify it, rendering the termination unlawful, unfair, and contrary to justice and equity.

21. The Claimant's claim is for payments comprising of payment for days worked in July 2017, one month's salary in lieu of notice, accrued leave, severance pay calculated at one month's salary for each completed year of service, a discretionary payment, and maximum statutory compensation equivalent to 12 months' salary. In total, the Claimant seeks Kshs.28,460,318.00 as compensation for the alleged unfair and unlawful termination.

22. On cross-examination, the Claimant stated that he did a certain percentage of cloud business, about 10% and 90%,

on the premises. He confirmed that he was given reasons for the redundancy.

23. He confirmed that he was aware that *cloud* was becoming the mode of holding data as it was convenient to businesses, though it is a developing field.

24. It was his testimony that the Respondent, being one of the top IT entities in the globe, would not just change its strategic direction to target him.

25. He confirmed that he was invited to consultative meetings before redundancy and that, although he indicated that the Respondent had sourced a cloud sales director and a sales representative, it did not do so while he was still employed. He further confirmed that the Director position was senior to his, while sales representatives were junior to his.

26. The Claimant stated that he did not have documents showing his credentials in cloud. He confirmed receipt of a redundancy notice informing him that his position was no longer needed. He states that he was given an opportunity to look for alternatives, which included internal ones.

27. The Claimant further testified that he does not have proof to show that his monthly salary was Kshs.1,156,400/-. Further, although the Claimant denied payment of terminal dues, he confirmed on cross-examination that the payments were made in April and May 2024 in the sums of Kshs.3,176,912 and Kshs.375,830 respectively.

28.He further confirmed that he was actually paid the first installment in July 2017 and that he received Kshs.167,000 on 21<sup>st</sup> November, 2019. He avers that the computation done when he was declared redundant amounted to Ksh.5,332,316, which was the total gross amount before taxes were deducted.

29.The Claimant confirmed that in his computation, he used the amount of Kshs.1,156.400/- while his monthly salary was Kshs.578,200/-. He states that he did not produce his pay slip before the court, and that the omission was not deliberate. He further confirmed that only the fixed salary and transport allowance were payable as of right and that commission was subject to meeting targets.

30.It is his position that the Respondent's computation for the days worked in July tallies with his claim.

31.The Claimant's further testimony is that what the Respondent promised to pay was based on a Kshs.578,200 monthly salary, while his claim is based on Kshs.1,156,400 monthly salary.

32.He finally confirmed that the total sum paid so far amounts to Kshs.3,552,742.

33.The Claimant finally prays that the Court grant him the relief sought in his Memorandum of Claim.

### **The Respondent's Case**

34. The Respondent's case is that the Claimant's termination was lawful and justified. It states that the redundancy was necessary, conducted in line with applicable laws, and that the Claimant received and accepted all due terminal benefits, and denies that the Claimant is entitled to any of the remedies he seeks.

35. The Respondent states that the Claimant was initially employed on 16<sup>th</sup> April 2007 as an Application Sales Representative, based in Nairobi, Kenya, under a written contract, and that following the Respondent's incorporation on 1st September 2014, it assumed the Claimant's employment under the same terms and conditions, except that his salary was thereafter paid in Kenya Shillings.

36. The Respondent further asserts that on 19<sup>th</sup> September 2014, the Claimant was promoted to Sales Senior Manager-East Africa, with the responsibility for managing the Technology and Middleware business in the region.

37. The Respondent avers that its business primarily involved selling cloud-engineered systems, database software, and enterprise technology products, with a strong focus on cloud services and customer transformation. It further avers that in 2017, its global Head Office restructured the Technology Sales Line of Business by shifting to a Cloud Platform Sales model across various regions, including Kenya, thereby affecting all subsidiaries and leading to organizational changes.

38. It is its case that as a result, the Claimant's role as Sales Senior Manager-East Africa was declared redundant, and replaced with a new, more strategic role of Cloud Sales Director, intended to lead the regional cloud strategy and oversee Cloud Platform Sales Representatives.

39. The Respondent states that on 20<sup>th</sup> June 2017, it met with the Claimant to inform him of a proposed business restructuring focused on cloud systems, which could affect his role. It states that he was further advised that no final decision had been made, that a one-month consultation process would follow, and that, during this period, he was invited to submit written proposals to help mitigate potential redundancy.

40. The Respondent avers that the Claimant was also encouraged to apply for other roles within the company, including the prospective Cloud Sales Director position, and was assured of support and positive recommendations. Additionally, the internal placement team offered assistance in identifying alternative opportunities, and he was advised to update and share his CV.

41. The Respondent avers further that the Claimant was informed of the potential redundancy payout should his role be declared redundant, and that if not, he would continue in his existing position.

42. The Respondent states that the consultation details were formally communicated in a Notice of Proposed Redundancy

dated 20<sup>th</sup> June 2017, indicating that the redundancy could take effect on 20<sup>th</sup> July 2017. It further asserts that additional consultative meetings were held on 11<sup>th</sup> July and 17<sup>th</sup> July 2017, during which the Claimant was given an opportunity to submit proposals to avoid redundancy.

43. The Respondent states that the Claimant declined to provide any representations, did not pursue alternative job opportunities, and indicated he would wait for the restructuring process to conclude. It avers that he also refused to sign the Notice of Redundancy.

44. The Respondent maintains that, despite efforts, it was unable to find a suitable alternative role for the Claimant, partly due to his lack of engagement, and consequently, the redundancy was confirmed, and a formal redundancy letter was issued on 21<sup>st</sup> July 2017.

45. The Claimant was informed that he would receive his terminal dues by 30<sup>th</sup> August 2017, including salary for days worked, one month's pay in lieu of notice, accrued leave, and severance pay based on his years of service. Additionally, the Respondent offered a discretionary payment of Kshs.578,200.

46. The Respondent states that in a letter dated 29<sup>th</sup> July 2017, the Claimant acknowledged that severance pay was legally calculated at 15 days per year of service but requested it be increased to one month's pay, along with payment of sales commissions. The Respondent states that it declined to

increase the severance due to a lack of legal or contractual basis, but agreed to pay the commissions owed.

47. It further asserts that the Claimant's terminal dues were paid in full, subject to statutory deductions, including a deduction of Kshs. 238,632.91 for outstanding expenses on an American Express (AMEX) card issued to him.

48. The Respondent denies that the restructuring was intended to target or discriminate against the Claimant, maintaining that it was a global strategic decision to shift toward cloud based operations and not a personal action against him.

49. The Respondent denies that the restructuring targeted Kenyan employees, describing such claims as false, defamatory, and unsupported. It reiterates that the Claimant was given a fair opportunity during the consultation period to apply for alternative roles, including the Cloud Sales Director position, but failed or refused to do so, and was therefore not sidelined.

50. The Respondent also denies that the decision to abolish the Claimant's role was premeditated, maintaining that no final decision had been made during the consultation phase and that the redundancy decision was reached afterward.

51. The Respondent asserts that the redundancy process was conducted fully in compliance with the law and dismisses the Claimant's allegations as baseless and an afterthought.

52.The Respondent denies violating the Claimant’s right to fair labour practices or any constitutional rights and rejects allegations of cruel, inhumane, or degrading treatment, stating that the restructuring was neither targeted nor intended to humiliate the Claimant or any employees.

53.It maintains that the Claimant is not entitled to the reliefs sought and asserts that all terminal dues, including salary for July 2017, notice pay, severance, accrued leave, and commissions, were fully paid by 31<sup>st</sup> August 2017.

54.The Respondent states that severance pay was lawfully calculated at 15 days per year of service in accordance with the Employment Act, with no basis for the claimed 30 days. It avers that the additional discretionary payment (“Oracle Discretion Amount”) was not an entitlement, but was nonetheless paid in good faith.

55.The Respondent maintains that the termination was solely due to redundancy, following a fair and lawful process that included consultations and an opportunity for the Claimant to apply for alternative roles, which he did not pursue. Accordingly, the Respondent contends that the claim for unfair termination and compensation is unfounded.

56.In examination in chief, RW1 denied that the Claimant was earning Kshs.1,156,400 and argued instead that he earned a basic pay of Kshs.500,000 and a transport allowance of Kshs.78,000 per his contract of employment, and the pay slip for July, 2017 produced in evidence before court. He

avers that although the Claimant was paid a commission, it was variable income and not a guaranteed payment.

57.RW1 further states that the Claimant was overpaid by Kshs.80,000, since he was paid full pay for the month of July 2017 instead of the 21 days he worked.

58.RW1 states that the Bank statement produced by the Claimant shows that all his dues were paid and that the amount paid tallies with the amount he seeks herein. It avers that the Claimant computed severance pay using the disputed pay of Kshs.1,156,400 and for 30 days for every year worked instead of 15 days.

59.On cross-examination, RW1 told the court that the Respondent served the Labour Officer with a redundancy notice, but that the same has not been produced before the court. On the selection criteria, the witness told the court that no criteria were applied since the position was held by only one person, and that employees of other subsidiaries were also affected by the restructuring.

60.The witness told court that their bank was asked to process the Claimant's dues on 21<sup>st</sup> July, 2017, but the same was only process in 2024.

61.It is the Respondent's case that the Claimant is not entitled to the reliefs sought and urges the Court to dismiss the claim with costs.

## **The Claimant's submissions**

62. It is the Claimant's submission that the redundancy process was both procedurally and substantively flawed, firstly for reason that the notice did not comply with the law because there is no evidence that the Labour Officer was notified, as required. The Claimant further maintains that the Respondent failed to comply with Section 40(1) of the Employment Act, particularly regarding full payment of terminal dues.

63. The Claimant argues that the Respondent failed to apply a fair and objective selection criterion in the redundancy process, contending that even where only one position is affected, the employer is still required by law to demonstrate the criteria used to select the employee for redundancy. He had reliance in ***Dennis Leak Ojuok v Population Services Kenya (2022)KEELRC 901 (KLR)***, where the court held that employers must provide a fair and objective selection criterion during redundancy. The court emphasized that failure to disclose such criteria renders the process opaque and procedurally unfair, even where redundancy is justified by economic reasons.

64. The Claimant therefore maintains that the Respondent's failure to provide or disclose any selection criteria makes the redundancy process unfair and unlawful.

## **The Respondent's submissions**

65. The Respondent submits that the termination of the Claimant's employment on grounds of redundancy was lawful and justified. It argues that the Claimant has failed to discharge the burden of proof as required under Section 47(5) of the Employment Act, on the premise that he was required to establish a prima facie case showing that the termination was unfair or did not meet the standards set under Section 45 of the Act, which he failed to do.

66. In support of this position, the Respondent relies on the case of ***Galgalo Jarso Jillo v Agricultural Finance Corporation (2021) eKLR***, where the court held that an employee must first present prima facie evidence of unfair or unjustified termination before the burden shifts to the employer to justify the termination.

67. The Respondent submits that the redundancy was justified by a legitimate business need to transition from the Technology Sales Line of Business to a Cloud Platform Sales model. It explains that this shift aimed to create a more strategic role of Cloud Sales Director, which would drive the company's cloud strategy, provide leadership, and manage cloud sales operations in the region.

68. The Respondent further argues that such restructuring is common in the IT industry due to rapid technological changes. Accordingly, the Respondent maintains that the move to cloud-based sales was necessary to remain competitive, especially as other IT companies were making

similar transitions, and failure to adapt would have rendered its operations obsolete.

69. The Respondent submits that it has sufficiently justified the redundancy by demonstrating a valid and lawful reason for the termination. It relies on the decision in ***Daniel Mburu Muriu v Hygrotech East Africa Ltd (2021) eKLR***, in which the court held that redundancy constitutes a form of termination and must comply with Sections 43, 45, 47, and 49 of the Employment Act. The court further emphasized that once an employer establishes a valid and lawful reason for redundancy, it must then ensure full compliance with the procedural requirements set out under Section 40 of the Act.

70. Based on the foregoing, the Respondent argues that it had a legitimate business reason for the redundancy and therefore met its legal burden in justifying the termination.

71. The Respondent submits that it complied with the legal requirements on consultation and that the process undertaken was meaningful and in line with both domestic and international standards. It relies on the International Labour Organization Termination of Employment Convention, 1982, to argue that by virtue of Article 2(6) of the Kenyan Constitution, the Convention forms part of Kenyan law.

72. The Respondent submits that the Claimant acknowledged receiving the redundancy notice and maintains that the final

redundancy notice issued on 21st July 2017 complied with the legal requirement of at least one month's notice before the effective date.

73. The Respondent submits further that although the notice to the Labour Office could not be traced, the Respondent asserts through the testimony of its witness that such notice was indeed issued, noting that this was standard practice and that the evidence was not challenged. It sought to rely in the decision in ***Gladys Mutboni Mwangi & 20 Others v Barclays Bank of Kenya Limited (2016) eKLR***, where the court emphasized that consultation is a mandatory and substantive requirement in redundancy processes, particularly because such decisions directly affect employees.

74. The Respondent thus submits that it fulfilled its duty to consult in a fair, transparent, and timely manner, and maintains that the Claimant was fully informed and involved throughout the process and that efforts were made to find him an alternative role, but none was available, and the Claimant did not actively participate in mitigating the redundancy.

75. The Respondent submits that the Claimant was the sole holder of the Sales Senior Manager–East Africa position, and therefore the decision to abolish the role and replace it with a more senior, strategic Cloud Sales Director position was objective and fair.

76.The Respondent maintains that the criteria leading to the redundancy were fair and objective, and emphasizes that it is within an employer's prerogative to determine its business strategy and organizational structure.

77.The Respondent concludes that it has met its legal burden by demonstrating both substantive justification and procedural fairness in the redundancy process, and argues that the Claimant has failed to prove the allegations challenging the redundancy and has not established entitlement to the remedies sought.

78.Accordingly, the Respondent prays that the Claimant's case be dismissed in its entirety for lack of proof.

### **Analysis and Determination**

79.Upon careful consideration of the pleadings, the evidence adduced, the witnesses' testimonies, and the parties' submissions, the following issues crystallize for determination: -

- i. Whether the Claimant's termination by redundancy was both substantively and procedurally justified.
- ii. Whether he is entitled to the reliefs sought

### **Whether the Claimant's termination by redundancy was both substantively and procedurally justified**

80.A termination on account of redundancy is considered fair where the employer abides by the 7 steps set out under Section 40(1) of the Employment Act, which are considered the bare minimum standards for employee redundancy.

81.The conditions set in Section 40 are mandatory requirements of the law, and are not left to the choice of the employer. **(See Kenya Union of Journalists and Allied Workers v. Nation Media Group (2013) eKLR).**

82.The Claimant's position is that he was an employee of the Respondent whose employment was unlawfully and unfairly terminated under the pretext of redundancy. He contends that the termination was unlawful, on the premise that it did not comply with the substantive and procedural requirements under Section 40(1) of the Employment Act.

83.The first issue is whether the Respondent justified the termination of the Claimant's employment on the ground of redundancy. Notwithstanding that an employer has a prerogative to determine the structure of its business and may declare redundancies, it remains obligated to provide valid and justifiable reasons for the declaration of redundancy.

84.The Claimant's assertion is that the Respondent cited a business restructuring towards a *cloud based* sales model as the reason for the redundancy.

85.On its part, the Respondent's reason for redundancy is the transition from Technology Sales LOB to a Cloud Platform Sales model, which it contends resulted in the abolition of the Claimant's role and creation of a more strategic role.

86. The New Zealand court of Appeal in **G. N. Hale v. Wellington (1991) 1 N. Z. L. R 151 (CA)** had this to say on redundancy: -

***“.. this court must now make it clear that an employer is entitled to make his business more efficient, as for example by automation, abandonment of unprofitable activities, re-organization or other cost-saving steps, no matter whether or not the business would otherwise go to the wall.... the personal grievance provisions should not be treated as derogating from the right of the employers to make management decisions genuinely on such grounds. Nor could it be right for the Labour Court to substitute its own opinion as to the wisdom or expediency of the employer’s decision.”***

87. Further, it is now settled that redundancy is a legitimate ground for terminating a contract of employment, provided that the employer can show that actual redundancy was the reason for the dismissal. In **Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR**, the Court of Appeal held that redundancy is a legitimate business decision, but an employer must show a valid operational reason, and strict compliance with Section 40 before declaring an employee redundant.

88.The Claimant, on cross-examination, confirmed that he was aware that *cloud* was becoming the mode of holding data as it was convenient to businesses. It was his further testimony that he conducted about 10% of the cloud business and handled 90% of it on premises.

89.The Claimant further admitted that the Respondent, being one of the top IT entities in the globe, would not change its strategic direction just to target him.

90.In ***Daniel Mburu Muriu v Hygrotech East Africa Ltd (2021) eKLR***, it was held that redundancy is lawful when based on a valid business reason, provided the employer also complies with procedural requirements.

91.The Claimant having admitted that the IT industry was transitioning to cloud systems, his failure to lead evidence that he was proficient in *cloud business*, and further acknowledging that the new Cloud Sales Director role was more senior, leads me to the conclusion that the Respondent has established a valid and genuine operational reason for redundancy, which renders the termination by redundancy substantively fair, and so I hold.

92.On procedure, Section 40(1) of the Employment Act sets out mandatory conditions for a lawful redundancy, including notice to the employee and the Labour Officer, fair selection criteria, consultations, and payment of terminal dues.

93.The Claimant asserts that the Respondent failed to notify the Labour Office of the intention to declare redundancies as

required under Section 40(1)(a & b) of the Employment Act. He further maintains that the Respondent failed to apply a fair and objective selection criterion in the redundancy process, and that most of his terminal dues were paid 7 years later.

94. Although the Claimant admitted that consultations did take place, he maintains that the redundancy was predetermined and the consultations mounted were a mere formality.

95. The Respondent admitted that it did not produce proof of notification to the Labour Officer, and its witness merely stated that notice “*must have been issued.*”. It further contended that the Claimant was the sole holder of the position of Sales Senior Manager–East Africa position, and therefore the decision to abolish the role and replace it with a more senior, strategic Cloud Sales Director position was objective and fair.

96. As correctly submitted by the Claimant, Section 40(1)(a & b) of the Employment Act requires that notice of intended redundancy be served upon the trade union and the labour officer or the employee and the labour officer. In ***Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR***, the Court of Appeal held that notification to the Labour Officer is mandatory, and failure renders redundancy procedurally unfair.

97. The absence of proof that indeed notice of the intended redundancy was issued to the Labour Officer, is fatal to procedural compliance.

98. On the selection criteria, employees have a right not to be unfairly selected for redundancy. The requirement to apply an objective selection criterion, however, ordinarily applies when more than one employee is affected within the same category. The criterion is thus less relevant in this case, as there was no pool of employees to compare, and hence the Respondent was not strictly obliged to apply a comparative objective selection. The focus herein, therefore, shifts to transparency, consultation, and the substantive justification for the redundancy. **(See Kenya Airways Limited v. Aviation & Allied Workers (supra)).**

99. In respect of consultation, there is evidence that meetings were held on 20<sup>th</sup> June, 11<sup>th</sup> July, and 17<sup>th</sup> July 2017, and the Claimant was invited to make representations and apply for alternative roles. There is therefore no doubt that consultations were undertaken, and there is no legal requirement that the consultations must yield an agreement.

100. On the payment of terminal dues, it is evident that some payments were made in 2017, while significant payments were only made in 2024 after the suit was filed.

101. The Employment Act, 2007, does not explicitly set a strict timeline for payment of terminal dues, but the expectation

is that payment should be made promptly upon termination or within a reasonable time. Delay, therefore, though it undermines compliance with Section 40, does not, by itself, invalidate an otherwise lawful redundancy.

102. In the upshot, I find the redundancy unfair solely on account of failure to issue notice to the Labour Officer.

### **Whether the Claimant is entitled to reliefs**

103. For the reason that the procedural requirements were not met, the termination, though substantively justified, was procedurally unfair.

104. On the payment of severance pay, Section 40(1)(g) provides for severance at not less than 15 days for each year of service.

105. The Claimant's claim is computed based on 30 days per year of service, which has no legal basis. He further used a disputed salary (Kshs.1,156,400) without proof that that was his basic monthly salary.

106. The claim for enhanced severance, therefore, fails. Only statutory entitlement applies, and which should be computed subject to amounts already paid.

107. For the avoidance of doubt, the salary applicable is Kshs. 578, 200 being the amount supported by his pay slip and the contract of employment.

### **Compensation for unfair termination**

108. The Claimant's termination has been found procedurally unfair, which holding entitles him to the remedies under Section 49 of the Employment Act. (See ***Benjamin Langwen v National Environment Management Authority (2016) eKLR.***)

109. The court has held that the Respondent has proved a valid reason for the redundancy, and that the termination is only unfair on account of procedural lapses. Considering the Claimant's long service and his partial contribution to the termination by his failure to pursue alternatives to mitigate his losses, I deem an award of four (4) months' salary sufficient compensation for the unfair termination.

110. The other reliefs sought were based on the inflated salary, which was not proven, and the actual amounts owed having been paid, the claims fail and are dismissed.

111. In the final analysis, the Claimant's claim partly succeeds and orders granted as follows: -

- a) A declaration that the termination of the Claimant's employment was procedurally unfair.
- b) That the Claimant is awarded compensation equivalent to 4 months' salary for the unfair termination at Kshs. 2,312,800/- (Kshs. 578,200 being the applicable rate).
- c) The claims for enhanced severance pay and additional sums on account of days worked in July, notice pay, leave, and discretionary payment are dismissed, having already been settled.

- d) Costs of the suit shall be borne by the Respondent together with interest on (b) at court rates from the date of judgment until payment in full.

112. Judgment accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 23<sup>RD</sup> DAY OF APRIL, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Awino present for the Claimant

Mrs. Wetende present for the Respondent

Ms. Esther S- C/A