

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

(Before Hon. Lady Justice Monica Mbarũ)

CAUSE NO. E125 OF 2025

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

ROOFIG KENYA LIMITED.....RESPONDENT

JUDGMENT

The Claimant is a registered trade union. The Respondent is a limited liability company. The employees of the Respondent fall under the jurisdiction of the Claimant union representation for unionisable employees. Parties have a Recognition Agreement.

The claim is that the Respondent issued the Claimant with an undated notice of redundancy from 26 November 2025, contrary to section 40 of the Employment Act (the Act). Under sections 46(c) and (h) of the Act, there was a breach, as the selection of the affected employees for redundancy was due to unionisation and followed the outcome of Mombasa ELRC Cause No. E039 of 2025 between the parties herein.

Judgment in Cause E039 of 2025 directed the Respondent to conclude the CBA negotiations and report back to court on 3 December 2025. Instead, the Respondent issued the redundancy notice. Despite the Claimant's request for the Respondent to withdraw the notice, this has not been done.

The Claimant forwarded the harmonized CBA to the Respondent as directed in Cause No. E039 of 2025. The parties held a meeting on 17 November 2025, but the Respondent declined to sign the CBA and instead issued an undated redundancy notice. This is despite parties having a Recognition Agreement.

Upon the undated redundancy notice served on the Claimant on 26 November 2025, the Respondent issued termination notices to the employees on 27 November 2025, a day after the undated notice.

The Respondents are foreign nationals and might leave the court jurisdiction without any security. The notice issued to the Claimant is illegal and meant to frustrate court orders in Cause No. E039 of 2025. This violates Article 41 of the Constitution on fair labour practice.

The Claimant is seeking that the undated notice of redundancy be declared null and void. An order was issued that the Respondent should not declare a redundancy, hence affecting the grievants employment, contrary to section 40 of the Act.

In evidence, the Claimant called Francis Jirongo, the secretary of the Coast region, who testified that parties are under a Recognition Agreement, which paved the way for CBA negotiations. The parties held consultations and agreed on most clauses, save for 3 issues: general wage increase, house allowance, and redundancy benefits. This resulted in Mombasa ELRC Cause No. E039 of 2025. The court delivered judgment and resolved the issue of a general wage increase and house allowance. On the issue of redundancy, the court directed the parties to negotiate based on the Respondent's 10% offer and to report back to the Court.

Jirongo testified that parties met as directed by the court on 17 November 2025. The Claimant agreed to the 10% offer from the Respondent, but the Respondent refused to sign the CBA and instead issued a redundancy notice on 26 November 2025, taking effect on 27 November 2025.

Had the CBA been negotiated and signed by the Respondent, its terms would have applied to the grievants whose employment was impacted by the undated notice. The redundancy notice issued failed to meet the threshold under section 40 of the Act. It was meant to circumvent the law and orders under Cause No. E039 of 2025. The subject CBA is related to 2022 and 2023. Had this been signed, it would have automatically affected the redundancy dues payable to the grievants. The orders sought by the Claimant should be issued.

In reply, the Respondent asserts that the redundancy is lawful, necessary and reasonable in the prevailing circumstances. Although a harmonised CBA proposal was exchanged between the parties, execution of the CBA was expressly subject to the approval of the Respondent's board of directors.

Upon receiving the CBA proposal, the Respondent reviewed its deteriorating financial position and the impact of the EIPL, and the board resolved to cease operations entirely, resulting in the intended redundancy notice affecting 118 out of the 135 employees. Only a small number of essential personnel were retained temporarily to facilitate the shutdown.

The allegations made by the Claimant that it failed to engage the procedures under section 40 of the Act based on the Recognition Agreement are not correct. There is compliance with the provisions of section 40 of the Act, and such compliance is lawful and reasonable. There is no evidence from the Claimant that the directors will be moving out of the country; hence, security needs to be provided. There is no evidence that the Respondent directors are removing their assets from the court jurisdiction. These allegations are bad in bad faith.

The Claimant is not entitled to the orders sought. The claim should be dismissed with costs and an order issued that the redundancy process commenced by the Respondent is lawful, fair and justified.

In evidence, the Respondent called Ruth Mwashu, the human resources manager, who testified that she is conversant with the claim and the CBA negotiations. She was directly engaged with the Claimant, including a meeting held on 17 November 2025, pursuant to court orders in Cause No. E039 of 2025 regarding the CBA negotiations.

Negotiations for the 2022 and 2023 CBAs were conducted by the parties. It covered June 2023 to June 2025. Various proposals were discussed. Under the Respondent's internal governance structure, any CBA proposal is subject to approval by the directors. Although discussions were held with the Claimant, execution could only follow a board approval.

Upon consideration of the negotiated CBA, the board did not approve. This was due to the prevailing financial position and operational challenges. The Respondent commenced operations in July 2021 and has since incurred prolonged financial losses, which were demonstrated in proceedings under Cause E039 of 2025. The financial position was further worsened by the imposition of the Export and Investment Promotion Levy (EIPL), which substantially increased the cost of imported raw materials, particularly wire rods, essential to the Respondent's manufacturing operations.

The Respondent brought these challenges to the attention of the Ministry of Investment and Industry well before the redundancy process and before judgment in Cause E039 of 2025. Despite these interventions, the financial position did not

improve, forcing the board of directors to take the commercial decision to cease operations entirely.

Considering the scales of investment by the Respondent and not the judgment in ELRC Cause E039 of 2025, the notice of intended redundancy was issued in good faith. The Claimant and the labour officer were served on 26 November 2025. All individual employees were also served. The notices indicated that operations would cease on 2 January 2026. Consultations would be conducted in the intervening period.

On 8 December 2025, the Respondent remained available to engage with the Claimant and the employees on any matters arising from the redundancy notice. The same affected all employees, including Claimant members and operations in Mazaras, Nairobi, and Kisumu, except for 17 of 135 employees who were essential to the shutdown.

Each affected employee was provided with a written breakdown of their terminal dues, including:

- a) Redundancy pay.
- b) Notice pay.
- c) Accrued leave days.
- d) Salary for days worked.

e) All statutory dues.

Mwashi testified that, upon clearance, all employees have since been paid their terminal dues and certificates of service have been issued.

At the close of the hearing, parties filed written submissions.

Determination

The main claim by the Claimant is that the Respondent issued an undated redundancy notice received on 26 November 2025 affecting its members and essentially frustrating the conclusion and execution of the CBA negotiations directed under ELRC Cause No. E039 of 2025. The Claimant asserts that the undated notice violates section 40 of the Act and is contrary to fair labour practices under article 41 of the Constitution.

Indeed, the Respondent accepted that it issued notice to the Claimant and the labour officer on 26 November 2025. The notice arose from the realisation that, despite all efforts to revive the business, it continued to make losses, and hence the board approved a shutdown. This affected all employees save for a small number necessary for the shutdown.

Undeniably, a redundancy is not an ordinary declaration. The employer must face operational or other business challenges to arrive at such a crucial decision.

That is why, under section 40 of the Act, the law allows the employer to issue a notice to the employees, the union, and the labour officer when faced with an operational matter leading to termination of employment. In **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR;**

... [the employer is] within its rights to declare redundancies. ... [what the court is] to consider was that in this age of heightened technology, increased mechanization, and an increasingly skilled workforce, there are diverse business concepts which when effected, can cost effectively facilitate expansion and growth of a business, while reducing workforce requirements. ...

The Court of Appeal held that where the employer was faced with an operational matter under Section 43(2) of the Act, notice had to be issued to the employees before termination of employment. Section 40(1) of the Act required notice of the intended redundancy to be given to the employees likely to be affected and the labour officer for the area where the employer's business was situated. Notice to the affected employee (s) must be issued in person when the employee(s) is/are not unionised.

In the case of **Africa Nazarene University v David Mutevu & 103 others (2017) eKLR**, the court held that redundancy is a legitimate ground for terminating a contract of employment, provided there is a valid and fair reason based on the employer's operational requirements, and the termination is effected by a fair procedure. As section 43(2) of the Act provides, the test of what is a fair reason is subjective. The phrase “*based on operational requirements of the employer*” must be construed in the context of the statutory definition of redundancy.

In this case, the Claimant was issued with the general notice and personal notices dated 27 November 2025 issued to the employees. Although the notice to the Claimant is undated, it was served on 26 November 2025 and was to take effect on 2 January 2026. The Respondent was effectively closing down operations. All employees including Claimant members were affected.

In the case of **Cargill Kenya Limited v Mwaka & 3 others (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR) (22 October 2021) (Judgment)** the Court of Appeal held that where the employer is found to demonstrate adherence to the provisions of Section 40(1) of the Act, the reasons for, and extent of the redundancy apparent, such is not unfair termination of employment.

However, Under the Labour Institutions Act, the Labour Relations Act and particularly section 10(3) (e), 11(3), 17(5), and section 26 of the Act, any

benefit that accrue from a CBA is due to the employee. Any benefits including payment of wage arrears, whether current or backdated, upon the CBA, these are payable in arrears.

The position taken by the Respondent that there is a redundancy in the midst of negotiating and concluding a CBA for the years 2022 and 2023 does not negate the rights and benefits to the employees and grievants therefrom. Payment of wage arrears is permissible under the law. Such cannot be circumvented through a notice of redundancy however justified. The motions under ELRC Cause No. E039 of 2025 must be concluded on the merits.

The membership of the grievants under the Claimant insulates them from any unfair labour practices. Accruing rights and benefits that go with their employment with the Respondent are all due.

Accordingly, the court finds the redundancy process commenced by the Respondent through notice served on 26 November 2025 upon the Claimant lawful.

However, parties must conclude proceedings under ELRC Cause No. E039 of 2025 on the merits. Any benefits accruing to the Claimant and its members therefrom are subject to payment in arrears.

On costs, each party to pay its costs.

Orders accordingly.

Delivered in open court at Nairobi, this 30th day of April 2026

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Catherine and Omar

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