



**Munyefu v Care International Somalia & another (Cause 324 of 2019)
[2025] KEELRC 1128 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1128 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 324 OF 2019
DKN MARETE, J
MARCH 26, 2025**

BETWEEN

ELIZABETH MUNYEFU CLAIMANT

AND

CARE INTERNATIONAL SOMALIA 1ST RESPONDENT

**CARE EAST AND CENTRAL AFRICA REGIONAL MANAGEMENT
UNIT 2ND RESPONDENT**

JUDGMENT

1. This matter came around by way of a Statement of Claim dated 21st May, 2019. It does not disclose any issue in dispute on its face.
2. The 1st and 2nd Respondent's Memorandum of Defence dated 8th July, 2019 denies the claim and prays that it be dismissed with costs.
3. The claimant in an elaborate reply to defence dated 20th August, 2019 rubbishes the defence and prays that judgment be entered in her favour against the Respondent jointly and as prayed in the Statement of Claim.
4. The Claimant's case is that at all material times to this suit, she was employed by the 1st Respondent in the position of Head of Human Resource/Deputy Program Support Director until 31st January, 2019 when her employment was unfairly terminated.
5. The Claimant's further case is that she was employed on an open-ended contract and placed on a three months' probation period. On completion of the probation, the claimant was confirmed to employment vide a letter of confirmation dated 17th September, 2018.
6. The Claimant's other case is that she discharged her duties faithfully and diligently. On 9th November, 2018, the 1st Respondent held a meeting with the staff and informed them of a directive from the



Government of Somalia that the 1st Respondent ought to relocate to Somalia by 31st December, 2018 – the directive

7. Again, on or about 13th November, 2018, the 1st Respondent circulated an email regarding the Sormali Government directive. The email referred to a County Presence Review which was done in November, 2017 to devolve certain functions to Somalia. The Claimant was not privy to this information which was not brought to her attention during her recruitment and or the confirmation despite the information being available to the 1st Respondent before her interview process, probation period and subsequent confirmation of employment (Copy of the email dated 13th November is attached as Annex 4 (pages 14-15 of the Claimant's bundle of document)
8. On 15th January 2019, the 1st Respondent sent a notification to the entire workforce notifying them of the positions that would be affected by the redundancy The Claimant's position was one of the affected positions. There was no personal notification issued to the Claimant. She only learnt of the effect of the redundancy when she saw her name in an excel worksheet attached to email. (Copies of the bundles of the email dated 15th January 2019 and others that preceded it as well as the excel sheet, a Relocation Plan dated 15th January 2019 and other attachments are attached hereto as Annex 5 (pages 16-43 of the Claimant's bundle of documents)
9. The email of 15th January 2019 stated inter alia that a final decision on the positions to be affected would be made by 21st January 2019. This notice was barely a week long. This was barely sufficient for the Claimant and other members of staff to consider and give comments. In any event, the decision for termination was already made in that the email (as read with the Relocation Plan of 15th April 2019) also stated that the redundancies would take effect from 31 January 2019
10. The Claimant's further case is that the 1st Respondent came up with a Final Relocation Plan on 21st January 2019. The Claimant's position was confirmed as one of those to be a declared redundant as from 31st January 2019. (A copy of the Care Somalia Nairobi Liaison Office Final Relocation Plan dated 2st January 2019 is attached as Annex 6 (pages 44 to 57 of the Claimant's bundle of document.)
11. The 1st Respondent subsequently sent a letter of purported termination of employment on account redundancy dated 31st January, 2019 to the Claimant. The 1st Respondent informed the Claimant that her position would be rendered redundant effective from 31st March, 2019. The reason for the redundancy was expressed that; "following the recent directive from the Government of Somalia, all international NGOs operating in Somalia with offices in Kenya were asked to relocate from Nairobi to Somalia by the close of the year 2018." The termination was immediate and 31st January 2019 was the last working day for the claimant. At this time, she earned Kshs.472,500.00.
12. The claimant faults the redundancy as follows;
 - a. The directive dated 1st September 2018 from the Somalia Government did not necessarily mean that the 1st Respondent's office in Nairobi had been closed down. The directive required International NGOs to have physical presence in Somalia. CARE Somalia/Somaliland's Country Director was in Mogadishu in December 2018 and opened the Somalia office thereby meeting the Government's directive of having physical presence in Somalia. A copy of the directive is annexed hereto an Annex 10 (pages 64 of the Claimant's bundle of documents.)
 - b. The Claimant's position still exists and has not been properly declared under and or extinguished. The Claimant's position of Head of HR/Deputy Programme Support Director, though differently titled as Human Resource Manager has been advertised. There has therefore not been any abolition of office within the meaning of section 2 of the [Employment Act](#). The Respondents declared the Claimant redundant and not the Claimant's position. This is



unlawful. A copy of the advertisement is attached hereto as Annex 11 (page 65 of the Claimant's bundle of documents).

- c. The job description and skill-set of the advertised position remained the same. The redundancy was thus not legitimate. The 1st Respondent simply changed the title of a position, without a legitimate change to the job description and skill set and could not suffice as a proper redundancy; it is clear that the redundancy was a guise to get rid of the Claimant through the back door. A copy Claimant's job description is attached hereto as Annex 12 (page 66-69 of the Claimant's bundle of documents).
- d. As soon as the Claimant's employment was abruptly and unlawfully terminated on 31st January 2019, there was an email communication sent to all staff at 5.00 pm, in which an ethnic Somalia staff member was appointed as the Acting Human Resource Manager.
- e. The email dated 31st January 2019 for the new position (designated then as acting) indicated that the position is only available to Somali nationals. This was distinctly unlawful and discriminatory within the meaning of section 5 of the Employment Act and Article 27 of Our Constitution of Kenya. It is also amounted to a blatant breach of the Claimant's right to fair labour practice guaranteed by Article 41 of the Constitution.
- f. The fact that the 1st Respondent did not give the Claimant an option to take up the position upon relocation to Somalia shows that the redundancy was actuated by malice and bad faith.
- g. Further demonstration of the Respondents malice and had faith is that the redundancy amounts to unwarranted "punishment of the Claimant for properly conducting her duties but with outcomes that were not desired by East, Central & Southern Africa (ECSA) regional office for ulterior reasons. In particular, the Claimant in the course of conducting her duties did not recommend the dismissal of Mr Nelson Oluoch, the then Procurement Manager in or about August and September 2018 following a disciplinary process. The Claimant rightfully and correctly concluded that there were no valid reasons to warrant the dismissal of Mr. Oluoch from employment. Her position was confirmed by advice from external counsel engaged by the Organisation. It was however clear that the ECSA regional office expected the Claimant to recommend the dismissal of Mr Oluoch for no ulterior reasons. Copies of the records of the disciplinary process, email requesting for external advice and the external advice are attached hereto as Annex 14 (pages 72 to 84 of the Claimant's bundle of documents).
- h. The fact that the Claimant and Mr Oluoch were singled out for immediate redundancy with no option to serve their notice periods confirms the bad faith and malice. Staffs given the chance to relocate were allowed up to September 2019. At the very least, there was no basis for declaring Claimant position redundant on 31st January 2019.
- i. The Respondents' further unwarranted "punishment" of the Claimant is demonstrated by the fact that the redundancy amounted to retaliation against the Claimant for being part of a group of employees that escalated workplace grievances to the Organization's head office in Atlanta in August 2018. It was wrong and unlawful to get rid of the Claimant from legitimately raising workplace concerns. More specifically, the same is contrary to the provisions of section 2 of the Employment Act since redundancy should be at no fault of employee, regardless as to whether the fault is merited or not. A copy of note on the workplace grievance is attached hereto as Annex 15 (pages 85 to 91 of the Claimant's bundle of documents.)
- j. Then Senior Management Team (SMT) is the key decision-making organ of the 1st Respondent. The Claimant sat in the SMT her capacity on the head of Human Resource.



The fact that SMT was not involved in the process and that 2nd Respondent was spearheading this process speaks of mischief and usurping of the powers of the Claimant's Employer who was the 1st Respondent. The 2nd Respondent had no role to play in the employment of our client yet they were the decision makers of the so-called redundancy. As a matter of fact, ECSA employees were the authors of all documents that were sent as attachment to the Country office on redundancy. Evidence of authorship of some of the by ECSA is attached hereto as Annex 16 (pages 92 to 95 of the Claimant's bundler of documents)

- k. The termination was also contrary to the 1st Respondent's Human Resources Policy and Procedures, which provides at clause 17.3.9 that employees may be made redundant by the country director due to a programme reduction or if the position becomes redundant due to official structural alignment. An excerpt of Human Resource (HR) Policy Manual is attached hereto as Annex 17 (page 96 to page 162 of the Claimant's bundle of documents.)
13. Further, the claimant posits that her termination from employment on account of the purported redundancy was unfair, unlawful and was carried out in contravention of the provision of Section 40 of *Employment Act*, 2007 in the following aspect
- a) The 1st Respondent did not see the mandatory notice of at least 30 days as required by section 40(1) (b) of the *Employment Act*. The Claimant first learnt of the redundancy by seeing her name in an excel sheet attached to the general notification of 15th January 2019. The termination letter of 31 January 2019 did not also amount to the mandatory notice. The notification under section 40(1) (b) should be personal and not general. This did not happen.
 - b) The 1st Respondent breached express statutory provisions by issuing the termination letter on 31 January 2019 without a prior, proper and valid notice which should have been served for at least 30 days and not paid out in lieu.
 - c) The 1st Respondent failed to issue the mandatory notice and thereby denied the Claimant the right to participate in consultations in order to consider alternatives and or minimize the effects of the purported redundancy. No consultations at all and/or as required by law were carried out by the 1st Respondent.
 - d) The selection of the employees affected by the redundancy was not based on the criteria for selection (criteria) prescribed by law. The selection was not objective and was conducted in fundamental breach of section 40 (1)(c) of the *Employment Act* which requires that employees affected by a redundancy should be selected on the basis of skill, ability and reliability and seniority in time.
 - e. The 1st Respondent did not inform the Claimant of the criteria employed to select her position as being impacted by the redundancy. There are a number of employees who were not affected by the redundancy and will and/or have been redeployed to Somalia. The 1st Respondent did not give the Claimant an option to choose to relocate.
 - e. The redundancy was staggered with redundancies taking effect in January (including the Claimant's), February, June and September 2019. The 1st Respondent did not inform the Claimant as to why she had to be in the January 2019 group.
 - e. No notice was issued to the labour officer regarding the purported redundancy.
14. The Claimant also avers that the actions of the 1st Respondent resulted into a breach of her legitimate and reasonable expectations as follows;



- a) The Claimant joined the 1st Respondent's organisation after previous employment in which she worked for over 5 years. The 1st Respondent did not inform her of any impending restructuring upon commencement of her job or even at the time of confirmation of her employment. She was induced to leave a stable job to join the 1st Respondent.
 - b) The directive from the Somali Government was issued on 1st September 2018, being 16 days before the confirmation of the Claimant's employment on 17th September 2019, This directive was not disclosed to the Claimant. The confirmation in the circumstances amounted to a clear and unequivocal representation that the Claimant would not be affected by any restructuring.
 - c) Subsequent to the Somali Government directive, the 1st Respondent took the Claimant and other staff members through a HEAT (Hostile Environment Awareness Training) in preparation for relocation to Somalia. The training took place from 9th to 14th December 2018 at the cost of USD 2500 per employee. The HEAT training was very rigorous and it entailed enacting real life events such as acts of terror, active shooting, kidnapping, grenades explosions, and landmines among others. It was a very emotionally draining exercise and not all participants made it to the end. The Claimant needed to engage a counselor throughout the training.
 - d) The training thus amounted to further 1st Respondent's confirmation and representation that the Claimant's position would not be affected by the restructuring. It is not conceivable that the 1st Respondent would spend such amount of money and subject the claimant to such intense training in preparation for relation them deny the claimant the option to relocate. The only conclusion to be made in the circumstances is that the process was actuated by other ulterior considerations. A copy of the HEAT certificate issued to the claimant is attached hereto as Annex 18 (page 103 of the claimant's bundle of documents.)
 - e) The subsequent termination of Claimant's employment on account of redundancy notwithstanding the series of such representation buttress the assertion above that the redundancy was indeed actuated by malice and bad faith. The Claimant had the legitimate and reasonable expectation of her continued employment, having been offered an open-ended contract. The termination thus violated these expectations and rendered it unlawful
15. In conclusion, the claimant avers that the purported redundancy was a not substantially justified or procedurally fair. It was wrongful, unlawful and unfair.
16. She prays thus;
- a. A declaration that the termination of the Claimant's employment on account of the purported redundancy was unfair, wrongful and unlawful.
 - b. A declaration that the 2nd respondent unlawfully and illegally interfered with the Claimant's employment by spearheading and affecting the flawed redundancy process.
 - c. Compensation for unfair, wrongful and unlawful termination of employment on account of the purported redundancy equivalent to 12 months' pay – Jsgs,5,670.00.00.
 - d. A declaration that the Responders violated the Claimant's rights to equality and freedom from discrimination, fair labour practice and fair administrative action guaranteed under Articles 27, 41 and 47 of *the Constitution*.
 - e. Damages for discriminating against the Claimant in violation of Article 27 of *the Constitution*.



- f. Damages for breach of the Claimant's right to fair labour practice guaranteed under Article 41 of *the Constitution* of Kenya.
 - g. Damages for breach of the Claimant's right to fair administrative action guaranteed by Article 47 of *the Constitution* of Kenya.
 - h. Damages for breach of the Claimant's legitimate and reasonable expectation.
 - 1) Interests in payment set out in (b), (d), (e) and (f)
 - i. Costs.
17. The Respondent's case is a denial of the claim. They deny that the claimant's employment contract was wrongfully, unfairly and unprocedurally and or unlawfully terminated or that she is entitled to the orders sought.
18. The Respondents state as follows;
- a) The Claimant's employment contract was terminated on grounds of redundancy, following a directive issued by the Government of Somalia for all international non-government organisations ("International NGOs") based in Somalia to fully and physically relocate Somalia by the end of 2018.
 - b) The Claimant's termination was justified in the circumstances and was carried out. accordance with the applicable provisions of law.
 - c) The Claimant's claims are false, misleading and without any legal or factual basis.
19. The Respondents in defence also move out to narrate the events leading to the eventual declaration of the employment of the claimant and justify the same. This is as follows; On 27th April, 2018 the claimant was offered employment in the position of Head of Human Resources/Deputy Program Support Director by the 1st Respondent. At this time, the Government of Somalia had not issued the 1st Respondent with the directive on relocation to Somalia. On 1st of September, 2018 the Government of Somalia issued the directive for relocation of all international NGOs operating in Somalia but with offices outside the country to fully and physically locate to Somalia not later than the 31st December, 2018. On 9th November, 2018. After realizing that the Somalia Government was not going to extend the period of implementation of the directives held a meeting with all members of staff in Nairobi where they were formally briefed on the directives. On 13th November, 2018 an email was sent to all staff reiterating the discussion at the meeting and informing them that further meeting will be held to deliberate on the way forward. An update on this was done on 26th November, 2018 by the 1st Respondent's County Director. The 1st Respondent state that it communicated the progress of the functional analysis carried out to staff on 19th December 2018, notifying them of the way forward in the process.
20. The Respondent's further case is that the Proposed Relocation Plan with the 1st Respondent's employees for review highlighted the following key factors;
- i) That there had been a substantive shift in capacity of the 1st Respondent's operations to Somalia over several years, with only 41 out of 302 employees working in Nairobi. The Plan also noted that some of the remaining functions would now have to shift from Nairobi to Somalia following the directive from the Government of Somalia.
 - ii) That the Nairobi based staff would either be retained over the transition period, relocated to Somalia or made redundant. Relocation was contingent on CARE's ability to secure work



permits and visas and also on evidence that the relocation of individuals could be justified by having specialist skills that could not be found in Somalia within a reasonable timeframe, or that business continuity required it. Not all positions in Nairobi were eligible for relocation to Somalia. The Claimant's position fell in the category that was not eligible for relocation to Somalia.

- iii) That the criteria used for the functional analysis included inter alia the capacity currently available in Somalia, the work volume of the 1st Respondent's team in Nairobi, the administrative and back-office support services provided by the 1st Respondent to the 2nd Respondent for business continuity, key positions expected to be based in Somalia as per the Government Directive, the ability to recruit qualified, experienced and competent people in Somali on the key positions, connectivity and other infrastructure related limitations/ challenges to perform certain functions in Somalia.
 - iv) That the relocation or redundancy would be carried out in 3 phases; Phase I (through to 31 January 2019), Phase II (February-June 2019) and Phase III (July to December 2019). Each of the 41 one roles was given its current and future status and the phase within which the said relocation or redundancy would take effect. Phasing was necessary to ensure business continuity and so inevitably some staff would leave first and others would follow.
21. The Respondents deny that the termination of the employment of the claimant on ground of redundancy was unlawful and reiterate that;
- i) The Claimant had nearly 3 months' notice that the intended relocation would result in job losses, as this had been brought to her attention on 9th November 2018 and not 15th January 2018 as alleged.
 - ii) Consultative meetings were held with the 1st Respondent's members of staff from 9th November 2018. The Respondents shared regular updates on the process and actively engaged its members of staff, consistently seeking their views and/ or opinions on the process.
 - iii) On 15th January 2019, the 1st Respondent's members of staff (including the Claimant), were given an opportunity to address the Respondents on the Proposed Relocation Plan which identified the specific roles following the functional analysis carried out. The Claimant failed and/or neglected to address the Respondents on the same. Her claims at this stage are in afterthought.
 - iv) The selection criteria for redundancy is not limited to the grounds provided under Section 40 (1) (c) of the *Employment Act* 2007. The Claimant is put to strict proof thereof of the contrary. Further, the relocation and/ or redundancy was mandatory having been occasioned by the directive issued by the Government of Somalia. The criteria employed for the process was disclosed to all members of staff vide the Care Somalia Proposed Relocation Plan dated 15th January 2019, the Care Somalia Relocation Process Frequently Asked Questions dated 18th January 2019 and the Care Somalia Final Relocation Plan dated 21 January 2019.
 - v) The reasons why roles were to be abolished in phases were also disclosed in the Care Somalia Proposed Relocation Plan dated 15th January 2019, the Care Somalia Relocation Process Frequently Asked Questions dated 18th January 2019 and the Care Somalia Final Relocation Plan dated 21 January 2019. The Claimant is put to strict proof of her claims to the contrary.
 - vi) The 1st Respondent issued a notice of the intended redundancies to the Nairobi County Labour Officer, identifying the positions that were to be declared redundant and the effective dates of the said redundancies,



22. Again, the Respondents deny that they induced the Claimant to leave her previous place of employment as alleged or at all and she is put to strict proof thereof. The Respondents state that the position of Head of Human Resources/Deputy Country Director had been advertised in a local newspaper and was open for all qualified candidates to apply. Further, as reiterated herein, there was no impending restructure of the 1st Respondent as at the date of the Claimant's employment. The restructure was occasioned solely by the directive issued by the Government of Somalia on 1st September 2012 and the subsequent reminder on 1st December 2018.
23. Further, the Respondents state that the Claimant's confirmation on 17th September 2018 was in good faith and in compliance with its contractual obligation to the Claimant. The 1st Respondents efforts to engage with the Government of Somalia were unsuccessful and when it had no option but to take action as it did. The Claimant is put to strict proof of the contrary. The Respondents also reiterate what they, along with other international NGOs, were similarly impacted. The Claimant is put to strict proof of the contrary.
24. In the penultimate, the Respondents deny that the Claimant is entitled to the orders sought and states as follows:
- ii) The Claimant's termination was justified and procedurally fair. The Claimant is put to strict proof of the contrary. Her claim for compensation for unlawful termination is without legal or factual basis and ought to be dismissed in its entirety.
 - ii) The 2nd Respondent did not spearhead and influence the Claimant's termination of employment as alleged or at all. It acted within its mandate and in the circumstances to ensure a smooth and objective transition in the 1st Respondent's best interests. The Claimant's claims to the contrary are without basis and ought to be dismissed in their entirety. The Respondents reiterate that their operations were interlinked and the 2nd Respondent's actions and involvement in the process ensured arrangements for continuity during the transition period and provided support through the process in light of the impact of the relocation on employees. This was communicated and made clear to all members of staff in the Care Somalia Proposed location Plan. The Claimant is put to strict proof of the contrary.
 - iii) Claimant's constitutional rights were not violated by the Respondents as alleged or at all. She is put to strict proof thereof. The Claimant is also not entitled to damages in respect thereof.
 - iv) Claimant did not suffer discrimination as purported or at all and is put to strict proof of. The Claimant is also not entitled to damages in respect thereof.
 - v) The claimant's legitimate expectation of employment in the circumstances was untenable given the directive issued by the Government of Somalia for full and physical on and the closure of liaison offices in Nairobi. The directive could not have been reasonably foreseen by the 1st Respondent as at the date of the Claimant's employment.
25. The issues for determination therefore are;
- 1. Whether the termination of the claimant's employment on account of redundancy was wrongful, and unlawful.
 - 2. Whether the Respondents violated the claimant's constitutional rights under Articles 27, 41 and 47 of *the constitution*.
 - 3. Whether the claimant is entitled to the relief sought.



4. Who bears the costs of this cause.
26. The 1st issue for determination is whether the termination of the claimant's employment on account of redundancy was wrongful, and unlawful. The parties in their written submissions hold diametrically opposed position on this. They submit in reiteration of their respective cases.
27. The claimant in her written submission dated 28th November, 2023 submits in reliance of section 2, 40, 43 and 45 of Employment Act, 2007. Section 2 particularly defines redundancy as;
- “ the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous, and the practice commonly known as abolition of office, job or occupational loss of employment.”
28. The claimant further submits that the procedure for redundancy is set out in Section 40 of the Act which specifically places obligations and conditions that an employer ought to meet before declaring an employee's employment redundant. Those conditions are as follows-
- i. An employer, where an employee is a member of a trade union, shall issue at least one (1) month's prior notice of the intended redundancy to the union and the area Labour officer.
 - ii. Where the employee is not a member of a union, the notice shall issue to the employee personally and the labour officer.
 - iii. In selecting the employee(s) to be affected by redundancy, the employer has to consider these four criterion
 - a. Seniority in time
 - b. Skill
 - c. Ability
 - d. Reliability
 - iv. 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;
 - v. Any pending leave shall be paid for in cash before the employee is let go on redundancy.
 - vi. The employer shall pay the employee affected severance pay at the rate of not less than 15 days for each completed year of service.
29. Again, the claimant submits that section Sections 43 and 45 of the Act require an employer to only terminate employment based on valid reasons and to follow far procedure.
30. The claimant further sought to buttress her case by relying on the authority of *Henry Juma Obudho v David Engineering Limited* [2018] eKLR where the court emphasized that the conditions under section 40 of the Employment Act, 2007 are couched in mandatory terms and must all be met for a redundancy to be regarded as lawful, fairly and justified. This is as follows;l
- “ 12. Section 40 of the Employment Act is couched in mandatory terms and as held by this Court in *Francis Maina Kamau v Lee Construction* [2014] eKLR a



redundancy that does not observe the conditions set thereunder is an unfair termination within the meaning of Section 45 of the Act.

13. in the instant case, the Court did not see any attempt by the Respondent to comply with the dictates of Section 40 of the *Employment Act*. This renders the termination of the Claimant’s employment substantively and procedurally unfair.”
31. The claimant further sought to rely on authority of The position was also reiterated by this Court (Kart) in the case of *Mulyanga v Zitron Limited (Cause 876 of 2018)* 2023 KEELRC 2400 (KLR) where the court observed thus;
 24. For a redundancy to pass muster, it must be conducted in accordance with the provisions of section 40(1) of the *Employment Act*, 2007. This section is couched in mandatory terms and compliance with its provisions is imperative.
 25. An employer is obligated to comply with the seven (7) conditions prescribed therein consultations within the affected employees and or the union, where the employees affected by he redundancy are members of the union, is mandatory.
 26. Other requirements include notice o the union or the employees(s), if not members of a union, at least one month before the effective date. The notice must provide the reasons for and extend of the redundancy so as to fulfil the substantive justification test under section 45 of the *Employment Act*. Others include selection criteria, ensuring fairness where there is a collective bargaining. Agreement, payment of any leave due in cash, notice or ay in lieu of notice and severance pay for the duration served.
32. The Respondents in their written submission dated 23rd January, 2024 submits in reiteration of their case. It is their case and submission that the claimant has failed to prove her claim as pleaded. On this she joins issued with section 47(5) of the *Employment Act*, 2007 which obligate the claimant prove a claims of unfair and unlawful termination of employment on grounds of redundancy. This is discharged upon the claimant establishing a prima facie that the termination fell short of the confines of section 45 of the *Employment Act*, 2007.
33. Further, the claimant has not proved that the Respondents operate separately and independently or even that a position still exist and has not been declared redundant or extinguished. This also applies to the claim that the termination on account of redundancy was unwarranted punishment or targeted at herself.
34. The Respondent further submits that;Due process was followed in the redundancy exercise.The requisite statutory redundancy notices were issued to the claimant.Consultative meeting were had and communicated with the claimantThe selection criteria threshold under section 40(1) (c) of the *Employment Act*, 2007 was met.A case of lawful redundancy and termination of employment therefore ensuesThe claimant is therefore not entitled to the reliefs sought.
35. The claimant in a Claimant’s Reply to the Respondent’s Submission sum up the default in redundancy as follows;The Somali directive was not a proper justification for the redundancy.The mandatory notice of intense was not issued to her by the 1st Respondent in accordance with section 40(1) (a) and (b) of *Employment Act*, 2007.No consultation were conducted by the 1st Respondent with the claimant.The selection criteria under Section 40(1) (c) was faulty and unlawful.The second claimant unlawfully and illegally interfered with the claimant employment when she was not the employer.There is a obvious breach of the claimant legitimate expectation to continued employment with the Respondent.



36. The Claimant's case overwhelms that of the Respondent. She has ably established a case of unprocedural redundancy thereby leading to unfair termination of employment. From the onset, the claimant comes out with a case of non-compliance with section 40 of the *Employment Act*, 2007 thereby rendering the redundancy process defective and unlawful.
37. The claimant cites the defects in her process of redundancy and termination of employment as enumerated in the paragraph above. This is agreeable and was the scenario throughout the redundancy process. It is clear that this was actuated by malice and bad faith in the part of employer. This was for ulterior motive as demonstrated by the claimant in her evidence in support of the claim. The linkage of her and Mr. Oluoce's separation speaks volumes. I therefore find a case of a flawed redundancy process leading to the termination of the employment of the claimant and hold as such. This answers the 1st issue for determination.
38. The 2nd issue for determination whether the Respondents violated the claimant's constitutional rights under Articles 27, 41 and 47 of *the constitution*. The claimant submits that her constitutional rights were infringed and breached the Respondents.
39. This was by way of infringing on her right to fair labour practices as provided by Article 41 of the Constitution of Kenya. This was by; The selection criteria of employees affected by the restructuring as it was not objective or compliance with the *Employment Act*. The selection of other employees for transfer to Somalia and leaving out the claimant even after undergoing the Hostile Environment Awareness Training also amounted to unfair treatment contrary to Article 41 of constitution. Discrimination on grounds race and ethnicity by the 1st Respondent in the redundancy process. Her position was not made redundant and therefore the ouster was unfair and discriminative. Her replacement by an ethnic Somalia
40. On this the Respondent submits that the claimant is not entitled to two or more heads of damages on the same wrong as is the case here. The Respondent he chooses to buttress her case by relying on authority of *Gichuru v Package Insurance Brokers Ltd* [20211 KESC 12 (KLR)] where the Supreme Court held thus:
- (146) This however does not automatically shift the burden of proof in cases of discrimination against an employee to the employer. According to section 5(7) of the Act, an employer alleged to have engaged in a discriminatory practice must give reasons for taking certain actions against the employee. Where such actions are shown not to have any justification against the protected group, then there exists discrimination against such an employee and must therefore be addressed. In this instance, the appellant had discharged the burden to shift to the respondent who failed to discharge on their part
41. The Respondent submit that the claimant has not demonstrate how she was discriminated against or how her right to fair labour practices, legitimate expectation and or administrative action were breached. It is her case that she has demonstrated the abolition of the claimant's position by downgrading the same to lower position. This is not discriminatory.
42. The case for discrimination by the claimant is not adequately established or proven. The claimant has not demonstrated discrimination on a balance of probabilities. I also agree with Respondent's submission that it is not appropriate for one to introduce a multiplicity of claim on the same. Primarily, this comes out as a claim for unfair and unlawful redundancy. The issue of discrimination therefore becomes duplicitous in the circumstances. I therefore find against a case for discrimination and hold as such.



43. The 3rd issue for issue for determination is whether the claimant is entitled to the relief sought. She is. Having worn on a case of unfair, unprocedural and unlawful redundancy she becomes entitled to the relief sought.

44. I am therefore inclined to allow the claim and order relief as follows;

- i. A declaration be and is hereby issued that the termination of the claimant employment on account of redundancy was wrongful, unfair and unlawful.
- ii. Ten (10) months salary as compensation for unlawful termination of employment
.Kshs.472,500 x 10.....Kshs.4,725,000.00
Total of claimKshs.4,725,000.00
- iii. The costs of this cause shall be borne by the Respondent.
- iv. Interest at court rates from the date of this judgment till payment in full.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF MARCH 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Ms Kashindi instructed Munyao Muthama & Kashindi Advocate for the Claimant.

Mrs Wetende instructed by Kaplan & Stratton for the Respondent

