



Dulo v AIG Kenya Insurance Company Limited (Employment and Labour Relations Cause E915 of 2022) [2025] KEELRC 1082 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1082 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E915 OF 2022**

HS WASILWA, J

APRIL 3, 2025

BETWEEN

BERNARD DULO CLAIMANT

AND

AIG KENYA INSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this suit through a Memorandum of Claim dated 6th December 2022, citing a dispute under Section 87 of the *Employment Act*, 2007, against AIG Insurance Company Limited. The Claimant, was employed by the Respondent since 2nd August 2004 as Deputy Manager, Personal Lines Department and was confirmed in employment on 1st November 2004. The claimant avers that for over 18 years, he demonstrated exemplary performance, earning multiple promotions and awards, including promotions to Service Manager in 2007, Business Development Manager-Personal Lines in 2009, Profit Centre Manager-Financial Lines in 2011, and additional responsibilities as Head of Casualty in 2016.
2. The claimant stated that throughout his tenure, he received annual bonuses and salary increments. However, on 8th August 2022, the Respondent terminated his employment on the grounds of redundancy, a decision the Claimant contends was unlawful, unfair, and actuated by malice, personal vendetta, and discrimination by the Respondent's Chief Executive Officer. The Claimant argued that the redundancy was not genuine, as Financial Lines and Casualty Lines have always been independent divisions, and the Respondent retained all other employees within these divisions.
3. He further asserted that the redundancy process lacked fairness, was not preceded by an objective evaluation, and was used to pay him lower terminal benefits than those offered under a proposed Mutual Separation Agreement. The Claimant averred that the Respondent failed to notify the Labour Officer and used redundancy as a pretext to remove him, particularly after he had previously been interviewed for the CEO position.



4. The Claimant further cited instances of intimidation, refusal to increase his salary in May 2022, and withholding of the full 2021 bonus despite his department generating over 50% of the company's profit. The Claimant also alleged that his termination was predetermined and that the Respondent later advertised for the same position in September 2022. The Claimant, who was 52 years old at the time of termination, stated that under the Respondent's Human Resource Policies, he was entitled to retire at 65 years and would have served for 12 more years.
5. As of the termination date, his gross monthly salary was Kshs. 1,153,633, and he was entitled to benefits including private club membership, a family medical cover of Kshs. 3,000,000, and a salary increment in May 2022. The Claimant sought unpaid salary increments for April to August 2022 amounting to Kshs. 78,447, unpaid employer pension contributions totalling Kshs. 20,764, compensation for unfair termination at Kshs. 14,674,212, three months' pay in lieu of notice amounting to Kshs. 3,668,553, an ex-gratia payment of Kshs. 6,114,255, the balance of his Short-Term Incentive Award for 2022 at Ksh. 524,541.2, and an annual Royal Nairobi Golf Club membership subscription of Ksh. 57,960. The Claimant also sought interest on all sums at court rates and costs of the suit.
6. The Claimant swore a Verifying Affidavit affirmed that he is the Claimant, had read and understood the Memorandum of Claim filed by Ochieng Ochieng Advocates under his instructions, and that no other suit or prior proceedings existed between him and the Respondent on the same subject. He declared that the facts deponed are true to the best of his knowledge, belief, and information.
7. The Claimant filed a Witness Statement dated 6th December 2022, stating that he was employed by the Respondent on 2nd August 2004 as Deputy Manager, Personal Lines Department, on permanent and pensionable terms. His employment was confirmed through a letter dated 1st November 2004. He performed exceptionally well during his 18 years of service and received several awards, recognition, and promotions, including a bonus for exceptional performance on 18th December 2006, a promotion to Service Manager on 11th January 2007, a salary increment on 30th June 2008 and a recognition bonus on 31st October 2008.
8. The Claimant stated the he was further granted a "Special Retention Grant" on 19th December 2008 and promoted to Business Development Manager-Personal Lines on 26th January 2009. On 18th December 2009, he was awarded another performance bonus and was promoted to Profit Centre Manager-Financial Lines on 25th August 2011, later assuming additional responsibilities as Head of Casualty on 30th November 2016. He consistently received annual bonuses and salary increments.
9. The Claimant served the Respondent as Profit Centre Manager-Financial Lines and Acting Head of Casualty until his termination on 8th August 2022. He contended that the termination on account of redundancy was unfair and unlawful, actuated by malice and personal vendetta by the Chief Executive Officer. The redundancy was not genuine, as Financial Lines and Casualty Lines had always existed as separate profit lines, and his role had been restructured arbitrarily.
10. The Claimant further stated he was singled out for redundancy while other employees in the Financial and Casualty Lines divisions remained. The redundancy was declared while he was negotiating a mutual separation agreement, which the Respondent had presented for consideration. No objective evaluation for redundancy was conducted, and no justifiable reason was given as to why he could not continue heading Financial Lines.
11. The Claimant further alleged that the Respondent's CEO harboured ill will against him due to personal differences and fear of his seniority, given that he was the most senior employee after the CEO and had been interviewed for the CEO position. He cited instances of harassment, including denial of salary increments in May 2022 and withholding of his traditional percentage bonus for



2021 despite his department contributing over 50% of the Respondent's profit. The Claimant had lodged complaints with the Corporate Legal Compliance team and senior management but received no resolution. Following discussions, he was offered a mutual separation agreement on 11th May 2022, which he countered on 18th May 2022, but the Respondent failed to respond.

12. On 7th July 2022, the Respondent's CEO issued an Official Notice of Intended Redundancy, alleging that the Financial Lines and Liabilities division had become redundant. The Claimant attended a redundancy consultative meeting, where it was evident that he was the only employee affected. Contrary to the redundancy notice, Financial Lines and Liabilities had never been a single department, and they continued to operate separately after his termination. Despite the redundancy claim, the Respondent advertised for the position of Head of Financial Lines in September 2022, conducted interviews, and proceeded to fill the role.
13. The Claimant argued that the redundancy was a pretext to unlawfully terminate his employment. He was offered a mutual separation package, including an ex gratia payment of Kshs. 5,768,166.65. He alleged that the Respondent failed to notify the Labour Officer and that he had no opportunity to contest the redundancy notice. At the time of termination, he was earning a gross monthly salary of Kshs. 1,153,633, entitled to a family medical cover of Kshs. 3,000,000, and had a private club membership at Royal Nairobi Golf Club valued at Kshs. 57,960. He was also due for a 6% salary increment, which the Respondent failed to apply, resulting in an underpayment of Kshs. 78,447. The Respondent further failed to remit the employer pension contribution for April to July 2022, totalling Kshs. 20,764.
14. The Claimant sought judgment against the Respondent for salary increments totalling Kshs. 78,447, unpaid employer pension contributions of Kshs. 20,764, twelve months' salary as compensation for unlawful termination amounting to Kshs. 14,674,212, three months' salary in lieu of notice totaling Kshs. 3,668,553, an ex gratia payment of Kshs. 6,114,255 as offered in the mutual separation agreement, a Short Term Incentive (STI) Award of Kshs. 524,541.2, and annual membership subscription fees for Royal Nairobi Golf Club amounting to Kshs. 57,960. He also sought interest on the amounts at court rates, costs of the claim, and any other relief deemed fit.
15. The Claimant maintained that his termination was unlawful, unfair, and intended to push him out of employment for reasons unrelated to his conduct or performance. Despite demand and notice to sue, the Respondent refused to settle the claim, making the suit necessary.

Claimant's Written Submissions

16. The Claimant filed written submissions dated 24th January 2025, he relied on *Onesmus Kinyua Magoiya v Prudential Life Assurance Kenya* [2022] eKLR, where the court held that an employer must demonstrate the validity of a redundancy by providing evidence of the restructuring process, selection criteria, and measures to mitigate its impact. The Respondent failed to produce any such evidence before the court.
17. The Claimant cited *Swaleh Baakeer Abdulrahman v Transafrica Motors Limited* ELRC Cause No. E059/22, where the court held that an employer cannot abuse redundancy provisions to cover up other reasons for termination. He further relied on *Kenya Airways Limited v Aviation & Allied Workers & Others* [2014] eKLR, where Maraga JA held that a redundancy must be substantively justified and procedurally fair. The Claimant argued that his termination did not meet this threshold.
18. He submitted that Section 40 of the *Employment Act* requires an employer to follow due process in a redundancy, including providing notice to the affected employee and the Labour Officer, using objective selection criteria, and offering alternative employment where possible. The Respondent



- failed to meet these requirements, as no objective selection process was conducted, and the Claimant was not offered an alternative role despite the existence of the same position after his termination. The Claimant relied on *Barclays Bank of Kenya Ltd & Another v Gladys Muthoni & 20 Others* [2018] eKLR, where the court emphasized the need for genuine consultation before redundancy.
19. The Claimant maintained that his termination was procedurally unfair, as consultations were not meaningful, and the redundancy notice merely served to fulfill legal formalities rather than engage him in discussions to avert his termination. He cited *Kenya Airways Limited v Aviation & Allied Workers & Others* [2014] eKLR, where the court held that consultation must be real and not a charade. The Respondent did not demonstrate efforts to minimize the impact of redundancy or offer alternative employment. The Claimant concluded that the redundancy was a pretext to unlawfully terminate his employment, and he was entitled to compensation.
 20. The Claimant further submitted that the Respondent's failure to produce the selection criteria applied in identifying him for redundancy was fatal to its defence, relying on *Catherine Wangeci Thuita v Mount Kenya University* [2021] KEELRC 128 (KLR), where the court held that an employer must demonstrate the criteria used in redundancy selection. He argued that redundancy was not based on poor performance, as alleged by the Respondent, and cited *Gladys Agayo v Somak Travel Ltd* [2015] eKLR, where the court held that an employer must notify an employee of poor performance and provide a hearing before termination.
 21. The Claimant contended that he was the only employee declared redundant, while all others in his department remained, which was discriminatory and in breach of Section 5(3)(b) of the [Employment Act](#). He relied on *Swaleh Baakeer Abdulrahman v Transafrica Motors Ltd* ELRC Cause No. E059/22, where the court held that redundancy cannot be applied to a single employee, and upon an allegation of discrimination, the burden shifts to the employer to disprove it under Section 5(7) of the [Employment Act](#).
 22. The Claimant sought compensation for wrongful termination and underpaid terminal benefits, claiming Kshs. 294,735 for unpaid salary increments, Kshs. 20,764 for unpaid employer pension contributions, Kshs. 14,674,212 as 12 months' salary for unfair termination, Kshs. 3,668,553 for three months' salary in lieu of notice, Kshs. 6,114,255 in ex-gratia payment, Kshs. 524,541.2 as a Short-Term Incentive (STI) Award, Kshs. 57,960 for Royal Nairobi Golf Club membership, and interest on all sums at court rates.
 23. He argued that the Respondent failed to justify the redundancy and had initially offered better separation terms under a mutual separation agreement, only to later declare him redundant to pay him less. He relied on *Onesmus Kinyua Magoiya v Prudential Life Assurance Kenya* [2022] eKLR, where the court awarded 10 months' salary for wrongful termination, and *Catherine Wangeci Thuita v Mount Kenya University* [2021] eKLR, where 12 months' salary was awarded.
 24. He further submitted that the Respondent's CEO acted in bad faith by withholding his annual salary increment and STI bonus, despite awarding them to other employees. He relied on *Onesmus Kinyua Magoiya v Prudential Life Assurance Kenya* [2022] eKLR, where the court held that discretionary salary increments and bonuses must be exercised in good faith and not arbitrarily. He argued that he had a legitimate expectation of receiving these benefits, which had become contractual through custom and practice. The Respondent's refusal to pay these amounts was discriminatory and unjustified.
 25. The Claimant also submitted that the redundancy was a pretext to unlawfully terminate his employment, evidenced by the Respondent's advertisement of his former position shortly after his termination. He cited *Onesmus Kinyua Magoiya v Prudential Life Assurance Kenya* [2022] eKLR, where the court condemned redundancy used to disguise wrongful termination. He further argued



that redundancy payments did not bar the court from inquiring into the fairness of termination, citing *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR, where the Court of Appeal held that a discharge voucher cannot absolve an employer from statutory obligations.

26. He submitted that under *Kenya Airways Limited v Aviation and Allied Workers & Others* [2014] eKLR, redundancy payments alone cannot compensate for unfair termination. He also noted that his redundancy payments were received on a "Without Prejudice" basis. He concluded that his termination was unlawful and unfair, that he had established grounds for all reliefs sought, and urged the court to enter judgment in his favour with costs.

Respondent's Case

27. The Respondent filed a Memorandum of Reply dated 15th February 2023, denying all allegations in the Claimant's Memorandum of Claim except where expressly admitted. The Respondent admitted that the Claimant was employed as Deputy Manager, Personal Lines Department, on 2nd August 2004 under a letter of offer dated 7th July 2004 and confirmed on 1st November 2004. The Claimant was promoted to Service Manager, Personal Lines Department, on 11th January 2007 and later to Business Development Manager, Personal Lines, on 26th January 2009. On 25th August 2011, he was promoted to Profit Centre Manager, Financial Lines, and on 30th November 2016, he was given additional responsibilities as Head of Casualty. The Respondent acknowledged that the Claimant was awarded bonuses but stated that these were discretionary and dependent on company performance.
28. The Respondent denied that the Claimant's termination was unfair, asserting that AIG Inc. had, in early 2018, decided to disband the Liabilities and Financial Lines (LFL) role globally and implement separate structures for Financial Lines and Liability Lines. While this restructuring was initially not adopted in Kenya, the Respondent later decided to align its operations with AIG's global structure due to poor underwriting audit results. Consequently, the Respondent opted to split the LFL role into two separate positions—Profit Centre Manager for Financial Lines and Profit Centre Manager for Liability Lines—which led to the elimination of the Claimant's role and his redundancy.
29. The Claimant was issued with a Notice of Intended Redundancy on 7th July 2022, which was also served upon the County Labour Office and the National Employment Authority. He was invited to a consultative meeting on 21st July 2022, where the restructuring plan was presented. The Respondent alleged that the Claimant declined to apply for the newly created Head of Financial Lines position because it came with a downgrade in job grade from 23 to 22, although his salary and benefits would have remained unchanged.
30. The Respondent stated that the Claimant was invited for a follow-up consultative meeting on 1st August 2022 but refused to attend, thereby denying both parties the opportunity to explore alternatives to redundancy. On 8th August 2022, his employment was terminated, and he was paid terminal dues amounting to Kshs. 10,319,447.63. The Respondent subsequently advertised the Head of Financial Lines position. The Respondent further averred that discussions on a mutual separation agreement had commenced in April 2022 at the Claimant's behest, but he declined the terms offered. The Respondent argued that mutual separation and redundancy are distinct processes and that the Claimant could not claim compensation under both.
31. The Respondent denied any malice in the termination and maintained that the redundancy was lawful and necessary to align the Kenyan structure with AIG's global structure. It admitted that the retirement age for permanent and pensionable employees was 65 years but argued that the Claimant's redundancy was lawful. The Respondent denied that the Claimant was entitled to a bonus for 2022 or a 6% salary increment from April 2022, asserting that bonuses were discretionary and dependent on company



performance. The Respondent maintained that upon receipt of the demand letter from the Claimant, it responded, affirming that all his terminal dues had been paid in accordance with the law. The Respondent prayed for the dismissal of the Claimant's claim with costs.

32. The Respondent filed a witness statement by Caroline Wanjiku Mwangi dated 15th February 2023, in which she stated that she was the Human Resource Business Manager of the Respondent and had access to the Claimant's employment records. She re-affirmed the contents of the Respondent's Memorandum of Reply.

Claimant's Reply to the Respondent's Memorandum of Reply

33. The Claimant filed a Reply to the Respondent's Memorandum of Reply dated 27th February 2023, denying all allegations except where expressly admitted. The Claimant denied the assertions in paragraphs 8(a) to (o) of the Respondent's Memorandum of Reply, specifically rejecting that AIG Inc. had made a decision in 2018 to restructure the Liabilities and Financial Lines roles globally and that the Respondent had implemented such a restructuring.
34. The Claimant maintained that Financial Lines and Liabilities Lines had always been distinct structures within the Respondent's establishment and remained so. The Claimant denied that the documents marked "AIG-14" were minutes of the meeting held on 21st July 2022, asserting instead that they were unilateral notes by Ms. Carol Mutua prepared for the Respondent's defence, as they were never shared or confirmed with the Claimant. The Claimant further denied being invited to apply for the Head of Financial Lines position, asserting that the HR Business Partner had informed him that he could not apply due to personal differences with the Respondent's CEO, who was determined to terminate his employment.
35. The Claimant also denied initiating discussions on mutual separation, stating that it was instead proposed by the Respondent's regional representative following the Claimant's complaints about mistreatment by the CEO. Regarding bonuses, the Claimant asserted that the payment of bonuses was a long-standing practice of the Respondent, and having met performance targets, he had a legitimate expectation that the claimed bonuses would be paid.
36. The Claimant contended that the Respondent's Memorandum of Reply comprised bare denials that were evasive and intended to frustrate a fair trial. The Claimant reiterated the contents of the Statement of Claim and prayed for the dismissal of the Respondent's Memorandum of Reply and for judgment to be entered as sought in the Statement of Claim dated 6th December 2022. The filed further witness statement dated 6th November 2022 which re-affirmed the contents of his reply to the Respondent's Memorandum of Reply.

Respondent's Written Submissions

37. The Respondent filed written submissions dated 19th February 2025 in response to the Claimant's written submissions dated 24th January 2025. The Respondent submitted that the Claimant's termination on account of redundancy was lawful and justified. The restructuring was necessitated by AIG's global decision to split the Liabilities and Financial Lines functions. Section 40(1) of the *Employment Act* sets out conditions for redundancy, including notifying the employee and the Labour Officer, applying fair selection criteria, and paying severance pay. The Respondent complied with these requirements.
38. In Respondent relied on Kenya Airways Corporation Ltd v Tobias Oganya Auma & 5 Others [2007] eKLR, the court cited Halsbury's Laws of England Vol. 16, stating that redundancy occurs when an employer's need for employees in a particular role ceases or diminishes. In Kenya Pilots Association



v Kenya Airways Ltd (Cause No. 94 of 1993), the court defined redundancy as the involuntary and permanent loss of employment due to factors such as restructuring.

39. In *Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR, the court held that redundancy is lawful if there is a valid reason based on operational requirements and the employer follows a fair process. The Respondent adhered to these principles by consulting the Claimant and providing alternative options. In *Aviation and Allied Workers Union v Kenya Airways Ltd & 3 Others* [2012] eKLR, the court affirmed that employers have the prerogative to restructure their businesses to enhance efficiency and prevent closure. The Claimant's role was rendered redundant due to restructuring, and the Respondent exercised its right to optimize operations.
40. The Respondent further submitted that in *Kenya Airways Corporation Ltd v Tobias Oganya Auma & 5 Others* [2007] eKLR, the Court of Appeal held that a tribunal's role is not to prevent an employer from restructuring or adopting modern technology as long as relevant regulations are observed. In early 2018, AIG Inc. globally restructured its Liabilities and Financial Lines roles across 80+ countries, creating separate profit centre roles for Financial Lines and Liabilities. To align with this structure, the Respondent split the LFL role into two distinct positions: Profit Centre Manager for Financial Lines and Profit Centre Manager for Liability Lines, leading to the redundancy of the Head of Casualty and Financial Lines position.
41. The Claimant himself, in an email dated 25th February 2018, had suggested creating a dedicated profit centre for the Financial Lines Department to improve audit ratings. In *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR, the court upheld an employer's right to restructure where necessary, and in *G.N. Hale & Sons Limited v Wellington Caterers* [1990] 2 NZILR 1079 (CA), it was held that an employer may restructure if they believe redundancy is necessary for efficiency, with courts and unions having no mandate to interfere in business decisions.
42. The Respondent contended that the Claimant's redundancy was determined fairly, as confirmed in an email dated 14th June 2022 from AIG's Executive Vice President, Chief Human Resource Officer, Ms. Rose Marie Glazer, stating that the elimination of the Claimant's position was consistent with AIG's global change in business strategy. The consultative meeting on 21st July 2022 explained the restructuring and its impact. A follow-up meeting was scheduled for 1st August 2022, but the Claimant declined to attend, denying both parties an opportunity to explore alternatives.
43. The Claimant also refused to apply for the Head of Financial Lines position, which he was eligible for, as it came with a downgrade from Grade 23 to Grade 22, despite his salary and benefits remaining unchanged. In *John K. Otieno v G.E. East Africa Services Limited* [2021] eKLR, the court upheld redundancy where the claimant declined an alternative role and was paid redundancy benefits, finding no unfair termination. The Respondent, after considering necessary structural changes and consultations, terminated the Claimant's employment on 8th August 2022, which did not contravene Section 45(2) of the *Employment Act*.
44. Procedurally, Section 40(1)(a) and 40(1)(b) of the *Employment Act* require an employer to issue redundancy notices before termination. The first notice must be given one month prior, either to the trade union or to the affected employee and the Labour Officer. A subsequent termination notice follows after one month. In *Margaret Mumbi Mwago v Intrahealth International* [2017] eKLR, citing *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR, the court held that redundancy notices are not merely informative but should allow for consultation on measures to avert or mitigate redundancy. The Respondent issued a Notice of Intended Redundancy on 7th July 2022 to both the Claimant and the Labour Office, complying with Sections 40(1)(a) and 40(1)(b) of the *Employment Act*.



45. Consultation before redundancy is a legal requirement, as affirmed in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR, where the court held that redundancy consultations must not be a formality but must provide affected employees with an opportunity to propose alternatives. In *Rosilinda Okanda Oluoch & 38 Others v Style Industries Limited* [2020] eKLR, the court emphasized real consultation, citing *Cammish v Parliamentary Service* [1996] 1 ERNZ 404, which held that consultation must involve providing precise information, allowing reasonable response time, and considering suggestions before making final decisions. The Respondent invited the Claimant to a consultative meeting on 21st July 2022, during which a PowerPoint presentation explained the restructuring.
46. The Respondent then invited him for a follow-up meeting on 25th July 2022, which the Claimant declined, denying both parties an opportunity to explore alternatives. The Claimant was also informed of his right to apply for the Head of Financial Lines position but refused the offer. On 8th August 2022, the Respondent issued a termination letter to the Claimant on account of redundancy.
47. The Claimant's refusal to engage in efforts to mitigate redundancy was similar to the situation in *Mohamed Fawzan Chaudhri v CFC Stanbic Bank* [2017] eKLR, where the court dismissed the Claimant's case after finding that he had been sufficiently informed of the redundancy and paid dues in accordance with the law. Under Section 40(1)(e) to (g) of the *Employment Act*, an employer must pay severance, notice pay, and accrued leave. The Claimant was paid Kshs. 15,183,885.87 in terminal dues, including salary up to 8th August 2022 (Kshs. 319,418.55), one month's notice pay (Kshs. 1,153,633.00), severance pay at the rate of 15 days per completed year (Kshs. 10,328,699.97), accrued leave (Kshs. 1,125,418.02), one month's ex-gratia salary (Kshs. 1,153,633.00), a pro-rated 2022 bonus up to 8th August 2022 (Kshs. 1,049,083.33), and accrued reimbursements.
48. The Respondent submitted that the Claimant was paid his redundancy terminal dues and that the Claimant had not offered to return the sums paid to him in urging his claim for unfair termination. The Respondent questioned the Claimant's credibility, alleging that he had edited and omitted relevant portions of email correspondence that would have been useful to the Court. The Respondent pointed to several instances in the Claimant's Bundle where emails were incomplete, missing key sections, or redacted to exclude crucial information, including demands made by the Claimant during mutual separation discussions, which the Respondent termed extortionist.
49. The Claimant sought several reliefs. The Respondent contended that the Claimant had conceded in cross-examination that he was never issued with a letter confirming a salary increment. The claim for a 6% salary increment was therefore unfounded, and since the pension contribution claim was based on the alleged increment, it also failed.
50. The Respondent argued that compensation for unfair termination under Section 49(1) of the *Employment Act* was discretionary and subject to the court's assessment. In *CMC Aviation Limited v Mohammed Noor* Civil Appeal No. 199 of 2013, the Court of Appeal held that where an employment contract was terminable by notice, compensation should be limited to the notice period. The same principle was upheld in *Edgar Khaemba Pukah v County Assembly of Trans Nzoia* Cause No. 81 of 2016, *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR, and *Standard Group Limited v Jenny Luesby* [2018] eKLR, where the Court emphasized that compensatory awards are not punitive but meant to offset financial loss, and awarded two months' salary.
51. In *Nyamao v Nestlé Equatorial African Region Limited* [2024] KEELRC 65 (KLR), the Court held that compensation is only payable where redundancy is found to be unfair. The Respondent thus argued that since the redundancy was lawful, the Claimant was not entitled to compensation.



The Respondent further submitted that the Claimant's claim for three months' pay in lieu of notice was baseless, as he had already received one month's salary as required under Section 40(1)(f) of the [Employment Act](#).

52. The Claimant admitted in cross-examination that the three-month notice period was not contractual but customary and failed to produce any evidence of other employees receiving it. The claim for an ex-gratia payment of five months' salary was also unfounded, as the Claimant had rejected the terms of the Mutual Separation Agreement and could not now claim benefits from an agreement he refused to sign. The principle against approbation and reprobation, as outlined in Halsbury's Laws of England and applied in *Serah Nieri Mwobi v John Kimani Njoroge Civil Appeal No. 314 of 2009* and *Evans v Bartlam [1937] 2 All ER 649*, barred the Claimant from asserting rights under an agreement he had repudiated.
53. Regarding the Short-Term Incentive (STI) bonus, the Respondent argued that bonuses were discretionary and the Claimant had already been paid a pro-rated bonus up to August 2022. Since the claim was based on an unconfirmed salary increment, it failed. The claim for Royal Nairobi Golf Club membership was also untenable, as the membership was a benefit tied to employment, and the Claimant could not claim it after redundancy.
54. The Respondent maintained that costs follow the event and, having demonstrated that the redundancy was lawful, the claim should be dismissed with costs. The Court in *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] eKLR* held that justice is a two-way highway and that employers also have rights that courts must uphold. The Respondent asserted that the Claimant's redundancy was fair and lawful, that he was offered an alternative role but declined, and that he was paid generous terminal benefits.
55. I have considered the evidence and submissions above as tendered by the parties. The issue for this court's consideration are as follows:
 1. Whether there was a redundancy situation.
 2. If yes, whether the claimant was lawfully declared Redundant.
 3. What remedies to grant in the circumstances.

Issue No 1 Redundancy situation

56. A redundancy situation exists as submitted herein as per section 2 of the [Employment Act](#) exists when there is 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 practices commonly known as abolition of office, job or occupation and loss of employment.
57. The claimant has averred that there was no redundancy situation that really existed and that he was personally targeted by the CEO for personal reasons. The respondent aver that there was indeed a redundancy situation and that the splitting of financial lines had already been recommended earlier on in 2019. The claimant denied this position and indicates that the position he occupied was advertised an indication that a redundancy situation did not exist.
58. The claimant had been appointed as head of liabilities and financial lines having been appointed to this position vide a letter dated 30th November 2016 (page 34 of claimants bundle.) He was however given additional duties from 1/12/2016 assuming the liabilities role. In between this period to the redundancy decision, the claimant had some issues with his boss, the respondent's CEO and he



reported the matter to the sub Saharan Africa cluster Head (Mr Wayne Abraham) as per the email trail. On 7/4/2022 at 11.39 am the claimant wrote to the said Mr Abraham indicating that Mr Abraham had proposed an exist package for the claimant for which the claimant sought details. The claimant was also asked to consider a mutual separation agreement. Before this was done however, the redundancy kicked in.

59. The respondents on their part through their supplementary list of documents showed that the respondent had intended to restructure its operations globally from 2018. It is also evidenced that vide a letter of 17th May 2011 to Hilary Ogalo the management notified him of the split of Liabilities and Financial Lines profit centre into 2 distinct profit centres for which he was transferred to commercial lines division.
60. My consideration of the evidence and communication between the parties herein show that the issue of the respondents restructuring was on going issue before the claimant's redundancy. When the claimant testified in court he also indicated in his evidence that in 2019, Wayne had already proposed that Financial Lines and Casual Lines be dedicated to independent heads.
61. The upshot is that there had been indication of restructuring by the respondent before the claimant was declared redundant and this shows that there was indeed a redundancy situation.

Issue No 2 Procedures

62. The claimant had averred that the process leading to his redundancy was flawed and un procedural. From the documents produced before court, the claimant was served with a notice of intended redundancy dated 7/7/22. The notice indicated that the claimant was being issued with the 1(one) month notice and he was informed that in the said period consultations would be undertaken with him and he was free to ask or raise any questions, comments or suggestions that may arise. He was also informed that the separation package would be considered and determined in accordance with the employment act, contract of employment and company policies.
63. The claimant received and acknowledged receipt of the said notice on 7/7/22. On 18/7/22 he was invited to attend a consultative meeting on the redundancy. He was also invited to a follow up meeting on 26/7/22. On 8/8/22 upon expiration of the notice period, he was served with a redundancy letter and informed that he would be paid kshs 10,319,447.63, 8 days August pay 319,418.55, notice pay Kshs 1,153,635, leave pay Kshs 1,125,418.02, ex gratia pay Kshs 1,153,663, severance pay Kshs 10,382,699.97 and ATI award 2022 (pro rata) of Kshs 1,049083.3. He signed for his pay on 8/8/22 on a without prejudice basis.
64. His pension was payable in accordance with the Trust Deeds and rules of the Pension Scheme. Development loan and insurance premiums payable were deducted from the final pay. Not being satisfied with the redundancy package, the claimant filed this claim.
65. Section 40 of the Employment Act 2007 states as follows:
 - (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –
 - a. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy:



- (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer ;
- (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
- (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
- (e) the employer has where leave is due to an employee who is declared redundant , paid off the leave in cash;
- (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
- (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

66. From this section what needs to be done for a redundancy to be fair is listed. In the case of the claimant, the notice of one month was given. The letter notifying the claimant of redundancy also indicate that the labour offices and national employment authority had been informed. This was in line with section 40 of the [employment act](#) 2007.
67. My consideration of the facts pertaining to the claimant and the law indicate adherence to the correct procedure and therefore the claimant's indication that proper procedure was not followed is without basis.

Issue no 3 Remedies

68. As concerns remedies the claimant aver that he was not paid all his dues. From the tabulations given out, the claimant was paid all salary due but he avers that he was entitled to a pay rise from April to August 2022 which was not paid out. It is indeed true that there was an increment of salary to all employees at 6% but that the claimant was not given the pay rise. This position was confirmed by the respondents CEO. In view of this, the claimant is indeed entitled to the pay rise for the period April to August 2022 when he exited respondent's employment and I award him the same totalling kshs 294,735.00 as prayed.
69. It is also true that had the claimant been paid the correct salary of increment his pension contribution would have been more. The claimant is therefore entitled to the balance not paid out totalling 20,764/- as prayed. The total due to the claimant therefore is kshs 315,499/- less statutory deductions. In view of the nature of this judgment, there will be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD OF APRIL, 2025.

HELLEN WASILWA

JUDGE

