



**Kombo v SBM Bank (Kenya) Limited (Employment and Labour Relations Cause E739 of 2022) [2025] KEELRC 1483 (KLR) (21 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1483 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E739 OF 2022**

**HS WASILWA, J**

**MAY 21, 2025**

**BETWEEN**

**JOSEPHAT KOMBO ..... CLAIMANT**

**AND**

**SBM BANK (KENYA) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide a Memorandum of Claim dated 12<sup>th</sup> October 2022 on grounds that Respondent was unfair and/or unlawfully terminated his employment. He prays for judgment against the Respondent for: -
  - a. A declaration that the Respondent's termination/dismissal of the Claimant's employment was illegal, unlawful, unfair and inhumane.
  - b. An order for the Respondent to pay the Claimant compensatory damages calculated at Kshs. 1,652,352 or in lieu whereof reinstate the Claimant's employment.
  - c. An order for the Respondent to freeze the Claimant's loan until this suit is heard and determined.
  - d. An order barring the Respondent from effecting the default clauses on the Claimant's loan such as converting the loan to market rate, listing the Claimant with CRB, penalties on the loan among other pending the hearing and determination of this suit.
  - e. An order for the Respondent to pay the Claimant's costs for this claim plus interest thereon.

**Claimant's Case.**

2. The Claimant avers that on 18<sup>th</sup> August 2018, he was employed by the Respondent as a Senior Officer-Projects Administration on permanent and pensionable terms, at a gross salary of Kshs. 137,696.



3. The Claimant avers that he served the Respondent until 6<sup>th</sup> December 2021 when he received an email from the Respondent's Human Resource Department addressed to all members of staff informing them that the Respondent has not attained the desired number of staff exit through the Voluntary Employee Exit Scheme (VEES) and it would proceed to carry out a redundancy exercise.
4. The Claimant avers that vide an email sent on 7<sup>th</sup> December 2021, the human resource department invited him for a meeting with the Head of Human Resource Department and his Head of Department in the course of that day. During the meeting, he was handed a termination letter dated 6<sup>th</sup> December 2021 rendering him redundant effective 7<sup>th</sup> December 2021.
5. The Claimant avers that he received a second letter on 14<sup>th</sup> December 2021 which was duplication of the previous one save that it stated his last working day would be on 15<sup>th</sup> January 2022.
6. The Claimant avers that he had an outstanding personal loan of Kshs. 1,853,309.15 as at 4<sup>th</sup> January 2022. The loan in paragraph 9, was insured through Credit Life Insurance Policy which was to be effected immediately he lost his source of income and became unable to service the loan.
7. It is the Claimant's case that the Respondent never communicated the status of or effected the Credit Life Policy since he lost his employment.
8. The Claimant avers that the Respondent unilaterally placed the loan on moratorium of unknown period without consulting him. This extended the repayment period beyond 5 years given by the Respondent and the instalments will be higher due to accumulated interest on the principal that will spread over the remainder of the life of the loan.
9. The Claimant avers that the Respondent has threatened to convert the loan from staff rate to commercial rate in the event he defaults. He is apprehensive the Respondent will proceed to do so and further list him with the Credit Reference Bureau yet he has not gotten any form of employment or source of income.
10. It is the Claimant's case that the Respondent has grossly withheld information relating to the redundancy exercise despite numerous requests by himself, making the exercise impartial and opaque.
11. The Claimant avers that served the Respondent diligently and he had never had a disciplinary case or prior warnings against him.
12. The Claimant avers that his role with the Respondent still exists and there are people currently executing the roles he used to execute despite joining the Respondent company after him.

### **Respondent's Case.**

13. In opposition, the Respondent filed a Memorandum of Response and Counterclaim dated 19<sup>th</sup> October 2023.
14. The Respondent confirmed that the Claimant was its employee and he was offered a consolidated salary of Kshs. 60,320 per month and a special allowance of Kshs. 12,680 and a telephone allowance of Kshs. 2,000 together with other benefits.
15. The Respondent avers that the Claimant's employment was terminated on account of redundancy which exercise was undertaken in strict compliance with the provisions of the *Employment Act*.
16. It is the Respondent's case that it inherited over 800 employees from the defunct Fidelity Bank and Chase Bank on transitional organizational structure; owing to the heavy organizational structure inherited after acquiring employees from the defunct banks and the subsequent closure of several



branches between 2018 and 2021, it undertook a restructuring exercise to streamline its operations towards the end of 2021.

17. The Respondent avers that as part of the restructuring, it implemented a fit for purpose structure where some roles fell off and due to the excess number of staff who were not fit in the structure. This prompted the issuance of a memo on 5<sup>th</sup> October 2021 requesting staff willing to take up Voluntary Employment Separation Scheme (VESS) to apply for consideration; and informing its staff of its intention to declare redundancies if the ideal number of staff failed to apply for the VESS.
18. The Respondent avers that in compliance with the law, it issued the Notice of Voluntary Employment Separation Scheme to the Ministry of Labour on 5<sup>th</sup> October 2021 and further informed the Labour Office that if the uptake of the VESS will not be good, the Respondent intended to declare redundancies.
19. The Respondent avers that the VESS did not yield the targeted numbers forcing it to implement a redundancy exercise as communicated in the Memo and letter dated 5<sup>th</sup> October 2021.
20. The Respondent avers that vide a Memo dated 6<sup>th</sup> December 2021, it communicated to the staff its decision to terminate employees on grounds of redundancy and that the affected staff would be informed individually on 7<sup>th</sup> December 2021.
21. It is the Respondent's case that it informed the Labour Office vide a letter dated 6<sup>th</sup> December 2021 that pursuant to the Notice of Intention to declare redundancies issued to it on 5<sup>th</sup> October 2021, the Respondent was proceeding to terminate the employment of various employees on grounds of redundancy and stipulating the terms of the termination.
22. The Respondent avers that it further wrote to the Governor of the Central Bank of Kenya and the Chief Executive Officer of the Kenya Bankers Association notifying them of the termination of employment of staff on account of redundancy.
23. The Respondent avers that on 7<sup>th</sup> October 2020, the Claimant applied for a staff personal loan of Kshs.2,320,000 and executed a letter of offer dated 16<sup>th</sup> October 2020 which had the following salient features: the loan will be repaid over a period of 60 months; the interest rate set at the time (7%) is subject to the borrower's employment at the Bank; and upon termination of employment for whatever reason, the Bank shall adjust the interest rate to commercial rates which shall be determined at the Bank's discretion.
24. The Respondent avers that at the time of his exit from employment, the Claimant had an outstanding staff personal loan with a balance of Kshs. 1,884,520. The Claimant further made a written commitment on 4<sup>th</sup> January 2022 to continue servicing the loan and be repaying Kshs. 45,954.94 every 10<sup>th</sup> day on every month.
25. The Respondent avers that the Claimant did not service the loan as per the written commitment upon which the Respondent placed on moratorium for 3 months in accordance with the terms of the redundancy program at no extra to the Claimant for the benefit of the Claimant to avoid accruing interest for 3 months.
26. It is the Respondent's case that it recovered the interest from the Claimant's account in full compliance of the law, the terms and conditions of the letter of offer and the loan repayment commitment executed on 4<sup>th</sup> January 2022.
27. The Respondent avers that the Claimant had been enrolled for the Credit Life Insurance as is the policy for all the Respondent's clients who apply for credit facilities. Upon redundancy, the Respondent



- notified the insurance company as per the cover; and the insurance company was expected to handle the claim, which the Respondent has no control over.
28. It is the Respondent's case that the Claimant is entitled to collect the monies payable from the Insurance Company and remit it to the Respondent to offset the loan which action he has failed to do to date.
  29. The Respondent avers that the Claimant has not paid a single cent despite being offered a favourable interest rate and loan moratorium period and receiving a redundancy pay out of Kshs. 592,405.80 which he could have utilised part to reduce his liability with the bank.
  30. It is the Respondent's case that term 8 of the redundancy provided that the Claimant would enjoy the preferential staff rate if the loan remained performing, therefore, if it converts the loan to market rate, the action will be in accordance with the agreement.
  31. It is the Respondent's case that it has a legal obligation to disclose information regarding its non-performing accounts not only the Claimant's to the licensed Credit Reference Bureaus.
  32. The Respondent avers that the role held by the Claimant, Senior Officer-Projects Administration was among the roles affected by the restructuring exercise and it no longer existed in the new structure due to the closure of branches. Further, the Claimant's score was below the designated percentage based on the criteria used to declare redundancies.
  33. The Respondent avers that the Claimant was issued with a notice of termination of employment on account of redundancy dated 6<sup>th</sup> December 2021 and the Claimant signified his acceptance of the redundancy by signing on 10<sup>th</sup> December 2021. The Claimant was subsequently issued with a termination letter on account of redundancy on 14<sup>th</sup> December 2021 effective on 15<sup>th</sup> January 2022 with a months' notice period.
  34. It is the Respondent's case that all affected employees were granted 5 gardening leave days to allow the affected staff time to deal with the impact of the news of the redundancy which were not recovered from the employees' accrued leave days. The Claimant was further invited for outplacement training fully sponsored by the Respondent which he attended from 10<sup>th</sup> to 12<sup>th</sup> January 2022.
  35. It is the Respondent's case that the Claimant signed and accepted his full and final dues settlement letter on 13<sup>th</sup> January 2022, vide the letter, the Claimant confirmed that he has no further claims against the bank in regard to his full and final dues.
  36. In its counterclaim, the Respondent prays for judgement against the Claimant: -
    - a. The sum of Kshs. 1,852,587.95, being the outstanding Staff Personal loan together with interest thereon at the contractual rate from 11<sup>th</sup> August 2022 until payment in full.
    - b. Costs of the Suit and the Counterclaim.
    - c. Interest on (a) and (b) above at court rat from the date of filing this Memorandum of Response and Counterclaim until payment in full.
    - d. Any other relief that this Honourable Court deems fit to grant.
  37. The Claimant in the Counterclaim wholly and totally reiterated and relied on the content of the Memorandum of Response and avers that the same constitutes its counterclaim against the Respondent in the Counterclaim.



### **Evidence in Court.**

38. The Claimant (CW1) adopted his witness statement dated 12<sup>th</sup> October 2022 as his evidence in chief and produced his list of documents dated 20<sup>th</sup> October 2022 as exhibits 1-8 respectively.
39. During cross-examination, CW1 testified that Pioneer Insurance insured his personal loan, however, he did not follow up or have a direct process with the insurer.
40. The Respondent's witness (RW1) Simon Maina, testified that he is the Respondent's Head of Employee and adopted his witness statement dated 3<sup>rd</sup> November 2023 and produced his list of documents dated 3<sup>rd</sup> November 2023 as his exhibits no 1-86.

### **Claimant's Submissions.**

41. The Claimant submitted two issues: whether the Respondent complied with the law before declaring the Claimant redundant; and whether the Claimant deserves the orders sought.
42. On the first issue, the Claimant submitted that Section 40 of the *Employment Act* set out the procedure for redundancy; these principles are to be followed fully and not selectively. The Respondent has not shown it followed the laid down procedure and no score sheet was produced by the Respondent showing he scored poorly compared to his colleagues in the same department.
43. The Claimant submitted he was unlawfully declared redundant as the Respondent served him with a termination letter within 24 hours after issuance of notice. Further, the Respondent did not engage him how best his position can be retained or the redundancy mitigated.
44. The Claimant relied on the holding in *Aviation & Allied Workers Union v Kenya Airways [2015] KEELRC 1200 (KLR)* and submitted there was no consultation or good faith in the process of selecting and declaring him redundant. The speed which the process was undertaken shows the Respondent had a specific outcome in mind which was to be achieved whether the Claimant participates or not.
45. It is the Claimant's submission that having established the declaration of redundancy was unfair and that he was singled out despite being ready to continue serving the Respondent; the only suitable remedy is to compensate him due to unfair termination.

### **Respondent's Submissions.**

46. The Respondent submitted on three issues: whether due process was followed in declaring redundancy; whether this Honourable Court has jurisdiction to determine the Respondent's Counterclaim; and whether the Claimant is entitled to the orders sought.
47. On the first issue, the Respondent submitted that it is not in dispute that it acquired Fidelity Bank in 2017 and Chase Bank in 2018 inheriting a heavy organization structure due to the acquisition of the defunct banks' employees and subsequent closure of several branches. This prompted a restructure in order to streamline its operations which was implemented a fit for purpose structure where some roles fell off due to the excess number of staff who were not fit in the new structure.
48. The Respondent submitted that in its letter dated 5<sup>th</sup> October 2021, it notified employees in the event the VESS failed to yield expected results, it would embark on a redundancy exercise. The VESS was geared to reduce the Respondent's number of employees, the same failed, and the Respondent had no choice but let go of some employees through redundancy.



49. It is the Respondent's submission that it has proved that it had a valid and fair reason to declare the Claimant redundant as a result of the reorganization of the enterprise. Further, the score sheet is not applicable as the Claimant was the only employee in the department and there was his role was no longer required in the new structure as the Respondent was not undertaking any new projects.
50. It is Respondent's submission that the Claimant admitted in his pleadings and submission he received a notice of intention to declare redundancy dated 5<sup>th</sup> October 2021 which was also duly served upon the Ministry of Labour with a copy to the Labour Office.
51. The Respondent submitted that the decision to terminate employees on grounds of redundancy was communicated to its staff, the Claimant included, vide a memo dated 6<sup>th</sup> December 2021, which further informed that the affected members of staff would be individually notified on 7<sup>th</sup> December 2021.
52. It is the Respondent's submission that vide a letter dated 6<sup>th</sup> December 2021, the Ministry of Labour and Banking Industry Regulators, the Respondent informed the labour office it was proceeding to terminate employment of various employees on grounds of redundancy and further stipulating the terms of the termination. The Respondent further wrote to the Governor of the Central Bank of Kenya and the Chief Executive Officer of the Kenya Bankers Association notifying them of the same.
53. The Respondent submitted that it retained the Claimant in the payroll from the time he was declared redundant on 7<sup>th</sup> December 2021 to 15<sup>th</sup> January 2022 despite the memo communicating the intention to terminate employment on account of redundancy issued on 6<sup>th</sup> December 2021 and a termination letter issued to individual employees on 7<sup>th</sup> December 2021.
54. In view of the foregoing, it is the Respondent's submission that the proper procedure of effecting redundancy is stipulated under Section 40(1) of the [Employment Act](#) and the same was followed before the Claimant was declared redundant.
55. The Respondent submitted that the Claimant's allegation that his role still exists is unsubstantiated and this Court should not pay attention to it.
56. On consultation, the Respondent submitted that it consulted with the Claimant before declaring him redundant. The Claimant was invited to a meeting at the Human Resources Department to be informed of the intention to declare him redundant and discuss the way forward. During the discussion, the Respondent in good gesture informed him he would be granted 5 gardening leave days and invited for an outplacement training fully sponsored by the Respondent to allow him deal with the impact of the redundancy.
57. On selection criteria, the Respondent submitted that it enlisted a professional consultant to evaluate its organization and departmental structures with the aim of improving its workflow and efficiency. The Respondent believes that the criteria for selection of the employees affected was professionally and independently done in line with *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] KECA 492 (KLR).
58. The Respondent submitted that the Claimant confirmed in his testimony that he enrolled for Credit Life Insurance and his insurer was Pioneer Insurance Company and not the Respondent. Therefore, the insurance company being a third party, it is the Claimant's liberty to follow up and collect any monies payable from the insurance company.



59. On discrimination, the Respondent submitted that it is not true that the Claimant was cherry picked and targeted as alleged as various notices were issued and the Claimant was engaged by the Respondent during the entire process.
60. The Respondent further submitted that it has produced evidence that the Claimant was the only employee in his role who did not fit in the new structure and he was declared redundant. Therefore, the allegation that the role still exists and the services the Claimant used to render are still existing is unsubstantiated.
61. On the second issue, the Respondent submitted that this Court is clothed with the requisite jurisdiction to hear and determine its counterclaim and relied on the decision in *Maiyo v Kenya Commercial Bank & another; William Osiemo t/a William Auctioneers (Interested Party)* [2022] KEELRC 36 (KLR). It is the Respondent's submission that its counterclaim emanates from the employer-employee relationship between the Claimant and the Respondent.
62. On the final issue, the Respondent submitted that the Claimant is not entitled to the orders sought as the redundancy process was carried out in strict accordance with the law and the Claimant was paid all his final dues which fact he confirmed.
63. I have examined the evidence and submissions of the parties herein. The Claimant's case is that he was unfairly declared redundant by the Respondent without following due process.
64. The Claimant contends that he was first informed of the redundancy process on 6/12/21, and on 7/12/21 he was handed a redundancy letter.
65. The Respondent admitted terminating the Claimant on redundancy due to the excess staff they had following the merger of Fidelity and Chase Bank. They aver that they informed the Labour Officer vide a letter of 6/12/21 of the intention to declare redundancies issued to it on 5/10/21.
66. I have looked at the documents supplied to court by the parties. I note that the letter of 6/12/21 was the notice of redundancy and the letter of 14/12/2021 was the letter terminating the Claimant from employment but indicated that the redundancy was with effect from 7/12/21.
67. The manner in which the redundancy was effected was however in breach of section 40 of the [Employment Act](#) 2007 which states as follows:

40.

- (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.

(2) Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part IX in which case that Part shall be applicable.

(3) The Minister may make rules requiring an employer employing a certain minimum number of employees or any group of employers to insure their employees against the risk of redundancy through an unemployment insurance scheme operated either under an established national insurance scheme established under written law or by any firm underwriting insurance business to be approved by the Minister.

68. The Respondent failed to issue the Claimant with 1 month notice as envisaged under section 40 of [Employment Act](#). The opportunity to negotiate with the Claimant in order to give him a soft landing space was also denied. The Claimant was held in the *Aviation & Allied Workers Union vs. Kenya Airways Ltd & 3 others (2012) eKLR* which cited *Mugford vs. Mildland Bank, UK, Employment Appeal Tribunal (EAT), App. No. 760 of 1996 IRLR 208, (1997)* which stated as follows:

69. Indeed, the Respondent did not consult with the Claimant and there is no knowing the process of selecting and declaring the Claimant redundant.

70. In view of the above position, it is my finding that the Claimant's redundancy was unfair and unjustified and therefore the Claimant is entitled to compensation which I grant him. Based on the inhumane manner of declaring him redundant without any notice whatsoever, and leaving him in limbo, I find compensation of 10 months salary is apt which I grant =  $10 \times 137,696 = 1,376,960/=$ .

I also grant him 1 month salary in lieu of notice =  $137,696/=$

Total =  $1,514,656/=$

71. The Respondent claimed from the Claimant an outstanding loan which the Claimant admitted owing equivalent to  $1,884,520/=$ .

72. The Claimant was therefore unable to pay the outstanding loan of  $1,884,520/=$ . The total due to the Claimant is therefore  $1,514,656/=$  less  $1,994,520/=$  due to the Respondent which is  $\text{KShs.}369,864/=$  awarded to Respondent as counterclaim.

73. Each party will bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> OF MAY, 2025.**

**HELLEN WASILWA**

**JUDGE**

