



REPUBLIC OF KENYA



Gechiko & 21 others v Kapil Bakery Limited & another (Employment and Labour Relations Cause 175 of 2017) [2025] KEELRC 1294 (KLR) (2 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1294 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE 175 OF 2017**

MA ONYANGO, J

MAY 2, 2025

BETWEEN

SAMUEL GECHIKO 1ST CLAIMANT
STEPHEN KIPRUTO KOSGEI 2ND CLAIMANT
JUSEPHAT KIPKOSGEI KOECH 3RD CLAIMANT
GEDION KIPCHIRCHIR LIMO 4TH CLAIMANT
GEOFFREY MUHONGO KINUTHIA 5TH CLAIMANT
GABRIEL GWAYERA 6TH CLAIMANT
MATROBA INDUSA WAINI 7TH CLAIMANT
KHAEMBA YAMAME ROBERT 8TH CLAIMANT
ALEXANDER VUSHULU MADEGWA 9TH CLAIMANT
PETER WAMALWA WEKESA 10TH CLAIMANT
EDWIN KIPROTICH TENDENEI 11TH CLAIMANT
ARON KURA 12TH CLAIMANT
SAMSON KIPROP CHERUIYOT 13TH CLAIMANT
SIMON SHILAGO KALAKACHA 14TH CLAIMANT
ALI KIPKEMBOI CHEPTOT 15TH CLAIMANT
PATRICK LINYALI MUHONGO 16TH CLAIMANT
SAMUEL K. MASINDE 17TH CLAIMANT
EVANS OKIYO EKASETE 18TH CLAIMANT
JOHN MBURIKA EHENZO 19TH CLAIMANT



RONALD ADIRA ASINGIRA 20TH CLAIMANT
LEONARD OTUNDO SANTOS 21ST CLAIMANT
JOHN AMUKUNE 22ND CLAIMANT

AND

KAPIL BAKERY LIMITED 1ST RESPONDENT
KANTILAL V. RABADIYA 2ND RESPONDENT

JUDGMENT

1. Vide a Memorandum of Claim dated 25th May, 2017 the Claimants aver that they were employed by the 1st Respondent, a body corporate registered under the Companies Act with its last known address of operation at Eldoret town within Uasin Gishu County, as general labourers as follows:

Name Date of Employment

Samuel Gechiko 01/05/2009

Stephen Kipruto Kosgei 01/11/2010

Jusephat Kipkosgei Koech 01/09/2010

Gdion Kipchirchir Limo 01/01/2026

Geoffrey Muhongo Kinuthia 01/02/2011

Gabriel Gwayera 6th Claimant 01/08/2009

Matroba Indusa Waini 01/10/2007

Khaemba Yamame Robert 01/01/2007

Alexander Vushulu Madegwa 01/06/2007

Peter Wamalwa Wekesa 01/12/2010

Edwin Kiprotich Tendenei 01/03/2012

Aron Kura 01/09/2010

Samson Kiprop Cheruiyot 01/01/2006

Simon Shilago Kalakacha 01/06/2010

Ali Kipkemboi Cheptot 01/08/2009

Patrick Linyali Muhongo 01/01/2016

Samuel K. Masinde 01/09/2010

Evans Okiyo Ekasete 01/03/2006

John Mburika Ehenzo 01/05/2009

Ronald Adira Asingira 01/02/2007

Leonard Otundo Santos 01/08/2010



John Amukune 01/02/2006

2. The 2nd Respondent is a male adult of sound mind residing and working for gain as the director of the 1st Respondent.
3. The Claimants aver that at all times material to this suit the Respondents were carrying on business of a bakery in Eldoret town within Uasin Gishu County and had engaged the Claimants as employees of the 1st Respondent.
4. The Claimants aver that the Respondents terminated their employment by way of redundancy without complying with the provisions of section 40 of the Employment Act vide redundancy notice dated 25th January, 2017.
5. The Claimants aver that the redundancy amounted to unfair termination for the following reasons:
 - a. The Claimants were not duly informed of the intention to declare the claimants redundant.
 - b. The notices were insufficient.
 - c. No leave to pay was given.
 - d. The said redundancy is, insufficient, unlawful, unfair, unsubstantiated and an unprocedural
 - e. One month's salary in lieu of the notice have not been paid.
 - f. The required severance pay has not been duly paid.
6. The Claimants further aver that during their employment they were grossly underpaid by the Respondents having regard to the statutory minimum rates of pay under the Regulation of Wages (General) (Amendment) Order in force at the material dates, worked overtime without payment, worked on rest days without pay and worked on public holidays without pay.
 - a. 1st Claimant
 - i. One month in lieu of notice Ksh. 15,425.00
 - ii. Overtime unpaid Ksh. 103,470.75
 - iii. Annual leave Ksh.8,997.90
 - iv. Severance paid Ksh.53,975.50
 - v. 12 months compensation for wrongful termination Ksh.212,856.00Total Ksh.394,737.15
Less amount paid by respondent Ksh.64,000.00
Claim amount due Ksh.330,737.15
 - b. 2nd Claimant
 - i. One month in lieu of notice Ksh. 11,554.00
 - ii. Annual leave Ksh. 4,042.90
 - iii. Severance paid Ksh.34,662.00
 - iv. 12 months compensation for wrongful termination Ksh.159,444.00



Total Ksh.209,703.90
Less amount paid by respondent Ksh.39,674.00
Claim amount due Ksh.170,029.90

c. 3rd Claimant

- i. One month in lieu of notice Ksh. 13,647.00
 - ii. Overtime unpaid Ksh. 85,089.00
 - iii. Underpayment Ksh. 37,004
 - iv. Annual leave Ksh.1,592.15
 - v. Severance paid Ksh.40,941,00
 - vi. 12 months compensation for wrongful termination Ksh.188,328.00
- Total Ksh.366,601.15
Less amount paid by respondent Ksh.39,917.00
Claim amount due Ksh.326,684.15

d. 4th Claimant

- i. One month in lieu of notice Ksh. 13,647.00
 - ii. Annual leave Ksh.7,960.75.15
 - iii. Severance paid Ksh.75,058.50
 - iv. 12 months compensation for wrongful termination Ksh.188,328.00
- Total Ksh.284,994.25
Less amount paid by respondent Ksh.69,571.00
Claim amount due Ksh.215,423.25

e. 5th Claimant

- i. One month in lieu of notice Ksh. 11,554.00
 - ii. Annual leave Ksh. 1,347.95
 - iii. Severance paid Ksh. 37,004
 - iv. 12 months compensation for wrongful termination Ksh.159,444.00
- Total Ksh.241,669.95
Less amount paid by respondent Ksh.31,351.00
Claim amount due Ksh.210,318.95

f. 6th Claimant

- i. One month in lieu of notice Ksh. 11,425.00
- ii. Overtime unpaid Ksh.103,470.00



- iii. Annual leave Ksh. 1,799.60
 - iv. Severance paid Ksh. 53,987.50
 - v. 12 months compensation for wrongful termination Ksh.212,856.00
 - Total Ksh.387,538.85
 - Less amount paid by respondent Ksh.55,000.00
 - Claim amount due Ksh.332,538.85
- g. 7th Claimant
- i. One month in lieu of notice Ksh. 11,554.00
 - ii. Annual leave Ksh. 1,347.95
 - iii. Severance paid Ksh. 51,993.00
 - iv. 12 months compensation for wrongful termination Ksh.159,444.00
 - Total Ksh.224,338.95
 - Less amount paid by respondent Ksh.63,445.00
 - Claim amount due Ksh.160,093.95
- h. 8th Claimant
- 9th Claimant
- i. One month in lieu of notice Ksh. 13,647.00
 - ii. Underpayment Ksh. 37,004.00
 - iii. Annual leave Ksh. 11,145.05
 - iv. Severance paid Ksh.61,411.50
 - v. 12 months compensation for wrongful termination Ksh.188,328.00
 - Total Ksh.311,535.55
 - Less amount paid by respondent Ksh.63,000.00
 - Claim amount due Ksh.248,535.00
- 10th Claimant
- i. One month in lieu of notice Ksh. 13,647.00
 - ii. Overtime unpaid Ksh. 84,089.00
 - iii. Annual leave Ksh. 4,776.45
 - iv. Severance paid Ksh.40,941.00
 - v. 12 months compensation for wrongful termination Ksh.188,328.00
 - Total Ksh.332,781.45
 - Less amount paid by respondent Ksh.37,691.00



Claim amount due Ksh.295,090.45

11th Claimant

- i. One month in lieu of notice Ksh. 11,554.00
 - ii. Annual leave Ksh. 6,739.80
 - iii. Severance paid Ksh. 28,885.00
 - iv. 12 months compensation for wrongful termination Ksh.159,444.00
- Total Ksh.206,622.80

Less amount paid by respondent Ksh.24,449.00

Claim amount due Ksh.182,173.80

12th Claimant

- i. One month in lieu of notice Ksh. 11,554.00
 - ii. Annual leave Ksh. 4,043.90
 - iii. Severance paid Ksh. 34,662.00
 - iv. 12 months compensation for wrongful termination Ksh.159,444.00
- Total Ksh.209,703.90

Less amount paid by respondent Ksh.39,674.00

Claim amount due Ksh.170,029.90

13th Claimant

- i. One month in lieu of notice Ksh. 15,890.00
 - ii. Annual leave Ksh. 5,561.50
 - iii. Severance paid Ksh. 87,395.00
 - iv. 12 months compensation for wrongful termination Ksh.224,328.00
- Total Ksh.333,174.50

Less amount paid by respondent Ksh.96,442.00

Claim amount due Ksh.236,732.50

14th Claimant

- i. One month in lieu of notice Ksh. 11,554.00
 - ii. Annual leave Ksh. 1,347.95
 - iii. Severance paid Ksh. 34,662.00
 - iv. 12 months compensation for wrongful termination Ksh.159,444.00
- Total Ksh.207,007.95

Less amount paid by respondent Ksh.34,500.00



Claim amount due Ksh.168,507.95

15th Claimant

- i. One month in lieu of notice Ksh. 15,425.00
- ii. Overtime unpaid Ksh. 103,475.00
- iii. Annual leave Ksh. 5,398.90
- iv. Severance paid Ksh. 53,988.90
- v. 12 months compensation for wrongful termination Ksh.212,856.00

Total Ksh.391,149.00

Less amount paid by respondent Ksh.59,200.00

Claim amount due Ksh.331,949.00

16th Claimant

- i. One month in lieu of notice Ksh. 13,647.00
- ii. Annual leave Ksh. 4,776.00
- iii. Severance paid Ksh. 75,058.50
- iv. 12 months compensation for wrongful termination Ksh.188,328.00

Total Ksh.281,809.50

Less amount paid by respondent Ksh.71,260.00

Claim amount due Ksh.210,549.59

17th Claimant

- i. One month in lieu of notice Ksh. 13,647.00
- ii. Annual leave Ksh. 14,329.35
- iii. Severance paid Ksh. 40,941.00
- iv. 12 months compensation for wrongful termination Ksh.188,328.00

Total Ksh.257,45.35

Less amount paid by respondent Ksh.24,449.00

Claim amount due Ksh.219,278.35

18th Claimant

- i. One month in lieu of notice Ksh. 13,647.00
- ii. Annual leave Ksh. 2,388.20
- iii. Severance paid Ksh. 75,058.50
- iv. 12 months compensation for wrongful termination Ksh.188,328.00

Total Ksh.279,421.70



Less amount paid by respondent Ksh.67,705.00

Claim amount due Ksh.209,716.70

19th Claimant

- i. One month in lieu of notice Ksh. 13,647.00
- ii. Overtime unpaid Ksh. 85,089.00
- iii. underpayment Ksh. 37,004.00
- iv. Annual Leave Ksh. 4,776.45
- v. Severance pay Ksh. 47,764.50
- vi. 12 months compensation for wrongful termination Ksh.188,328.00

Total Ksh.376,608.95

Less amount paid by respondent Ksh.50,000.00

Claim amount due Ksh.326,608.95

20th Claimant

- i. One month in lieu of notice Ksh. 15,425.00
- ii. Overtime unpaid Ksh. 103,475.00
- iii. Annual Leave Ksh. 5,398.90
- iv. Severance pay Ksh. 77,127.00
- v. 12 months compensation for wrongful termination Ksh.218,880.00

Total Ksh.420,305.90

Less amount paid by respondent Ksh.80,829.00

Claim amount due Ksh.339,476.90

21st Claimant

- i. One month in lieu of notice Ksh. 13,647.00
- ii. Annual Leave Ksh. 7,960.75
- iii. Severance pay Ksh. 40,94.00
- iv. 12 months compensation for wrongful termination Ksh.188,328.00

Total Ksh.250,876.75

Less amount paid by respondent Ksh.45,800.00

Claim amount due Ksh.205,076.75

22nd Claimant

- i. One month in lieu of notice Ksh. 17,090.50
- ii. Overtime unpaid Ksh. 120,689.40



- iii. Annual Leave Ksh. 23,926.70
 - iv. Severance pay Ksh. 93,997.75
 - v. 12 months compensation for wrongful termination Ksh.188,328.00
- Total Ksh.376,608.95
- Less amount paid by respondent Ksh.50,000.00
- Claim amount due Ksh.326,608.95

7. The Claimants pray for the following reliefs:

- a. A declaration that the redundancy process as carried out by the Respondents is unlawful and that during their employment with the respondents they were not remunerated as required by law.
- b. Payment of their respective sums of money claimed under paragraph 9 above.
- c. Costs and interests.
- d. Any other relief the Honourable Court may deem fit to grant.

8. In response to the Memorandum of Claim the Respondents filed Response to the Claimants' Memorandum of Claim dated 30th November, 2017 in which they deny the averments of the Claimants as stated in the Memorandum of Claim and state as follows:

- a. That the 1st Respondent on 18th January, 2017 wrote to the County Labour Officer informing them of its intention to close business, reasons thereof and sought his advise on how to calculate terminal benefits in compliance with the provisions of Employment Act No. 11 of and more specifically Section 40 thereof.
- b. That vide a letter dated 18th January, 2017 the County Labour Officer responded to the aforesaid letter and advised the 1st Respondent to adhere to the provisions of Section 40(1) of the Employment Act.
- c. That based on the advise of the County Labour Officer, the Respondents' did computation of the terminal benefits of all the employees and forwarded the same to the County Labour Officer for approval.
- d. That vide a letter dated 22nd February, 2017 the County Labour Officer wrote to the Respondents confirming that the calculation by the Respondents which were intended to be paid to redundant employees were in order and instructed the Respondent to go ahead and pay.
- e. That after the aforesaid approval by the County Labour Officer, the 2nd Respondent did post the computation on the employees Notice Board for each and every employee to see the intended amount for their terminal payments in full.
- f. That their being no complains form the employees, the Respondents on 28th February, 2017 fully paid off all its employees and they acknowledge receipt of their terminal dues and left the Respondents premises fully satisfied.
- g. That the 1st Respondent had no recognition agreement with any trade union during its life span.



9. The Claimants filed a Reply to the Respondent's Response in which they joined issues with the Respondents.
10. The suit was disposed of by way of written submissions. The Claimant's submissions are dated 7th February, 2024 while the Respondents filed submissions dated 14th February, 2024.

Claimants' Submissions

11. The Claimants submitted that the main issue for determination is the tabulation of terminal dues. It is submitted that on 25th January, 2017 the Respondents issued a general notice to the staff informing them of the decision and/or intention to relocate abroad due to harsh business environment. That the Respondents did a computation of the dues payable to the Claimants which consisted of severance pay only.
12. That the Claimants having not received communication on their terminal benefits, reported to the Minister for East African Community, Labour and Social Protection who wrote to the County Labour Officer, Uasin Gishu informing of the concerns of the Claimants by letter dated 8th February, 2017.
13. It is submitted that by letter dated 18th January, 2017 the County Labour Officer directed the Respondents to avail computation of payment of terminal benefits and to fully adhere to section 40(1) of the *Employment Act*. That the Respondents availed their computation which was approved by the County Labour Officer vide letter dated 22nd February, 2017, without involving the Claimants.
14. It is submitted that the communications between the County Labour Officer and the Respondent were never availed to the Claimants and neither did the Claimants receive any payment. That it is because of this that the Claimants lodged the instant suit.
15. It is submitted that on 22nd November, 2017 Radido J. upon hearing the application filed by the Claimants, directed the County Labour Officer to examine the Respondents employee records with a view of determining any dues unpaid. That the County Labour Officer never complied with the court orders and the efforts of the Claimants to summon the County Labour Officer were fruitless as the County Labour Officer did not comply with numerous summons served by the Claimants.
16. It is the submission of the Claimants that the redundancy notice served upon them did not meet the criteria set out in section 40 of the *Employment Act* which requires that notice be issued to each employee individually. For emphasis the Claimants quoted and relied on the decision in Kenya Scientific Research International Technical and Institutions Workers Union v Kenya Agricultural and Livestock Research Organization (Sugar Research Institute) 2019 eKLR where this court stated that the notification on record which was a memo did not amount to notice provided for by the Act.
17. It is further submitted for the Claimants that the computation of severance pay does not comply with section 40 of the Act which provides for severance pay at not less than 15 days' pay per completed year of service. It is submitted that the Respondents paid less than 15 days' pay per year worked. The Claimants urged the court to adopt their computation of severance pay filed with their claim.
18. It is further the submission of the Claimants that the Claimants never went for annual leave or off days yet the Respondent did not pay the same with the terminal dues as required by section 40(1) of the Act. They urged the court to adopt their computation for both annual leave and off days as filed with their claim.



19. On the remedies sought in the Claim, it was submitted that the Claimants are entitled to damages for unlawful redundancy as the redundancy did not comply with section 40 of the Act and was therefore unlawful. That the same amounted to unfair termination of employment.
20. The Claimants further pray for costs relying on section 12(4) of the *Employment and Labour Relations Court Act* and Hulsbury's Laws of England which provide that costs are at the discretion of the court. The Claimants quoted from Hulsbury's Laws of England as follows:

“The court has discretion as to whether cost are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice”
21. The Claimants further relied on the decision in High Court Civil Case No. 17 Of 2014 Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR

Respondents Submissions

22. It was submitted for the Respondents that they complied with section 40(1) of the *Employment Act*. That on 18th January, 2017 they wrote to the County Labour Officer giving notice of intended redundancy in compliance with the provisions of the Act. That vide letter dated 18th January, 2017 the County Labour Officer responded to the redundancy notice and advised the 1st Respondent to adhere to the provisions of section 40 of the Act.
23. The Respondents submit that based on the advise of the County Labour Officer they computed terminal benefits of all employees and forwarded the same to the County Labour Officer for approval. That by letter dated 22nd February, 2017 the County Labour Officer confirmed that the calculations by the Respondents were in order and instructed the Respondents to go ahead and pay.
24. The Respondents submit that they posted the calculations on the notice board for each employee to confirm and there having been no complaints from any employee the Respondents paid all the employees on 28th February, 2017, who acknowledged receipt and left the Respondents premises fully satisfied.
25. The Respondent submitted that the *Employment Act* recognizes redundancy as a legitimate mode of termination of employment, relying on the Court of Appeal decision in Kenya Airways Limited v Aviation and Allied Workers Union Kenya & 3 others [2014] eKLR where the court stated:

“thus, redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operation requirements of the employer and termination is in accordance with a fair procedure. As Section 43 (2) provides, the test of what is fair reason is subjective. The phrase “based on operational requirements of the employer” must be construed in the context of the statutory definition of redundancy.

What the phrase means, in my view, is that while there may be underlying causes leading to a time redundancy situations such as reorganization, the employer must nevertheless show that the termination is attributable to redundancy. Redundancy has to be no fault of the employee and arise where services of an employee are superfluous through the practice commonly known as abolition of job or occupation and loss of employment.



26. The Respondents further submitted that they complied with section 43 of the Act which requires employers to give reasons for termination of employment. That the Claimants did not question or contest the reasons given for the redundancy.
27. The Respondents further submitted that ILO Convention 158 and Recommendation 166 both acknowledge the right of employers to terminate employment for reasons of economic, technological, structural or similar nature and require employers to engage trade unions and the competent authorities where the employer is contemplating declaring employee redundant.
28. The Respondents submit that the redundancy carried out by them was lawful and in accordance with the law.
29. On the averment by the Claimants that they did not receive one months' notice or pay in lieu of notice the Respondents submitted that they paid all the Claimants as demonstrated at pages 1 to 22 of the Respondents' bundle of Documents.
30. They submit that they complied with both section 36 and 40(1) (f) and (g) of the *Employment Act*.
31. The Respondents submit that on 8th August, 2019 the court directed the County Labour Officer to file a report on the redundancy within 60 days and the report dated 7th December, 2017 was filed in court on 25th September, 2019. That in the report the County Labour Officer confirmed that that the only outstanding payment to the employees was in respect of prorated annual leave for 2017 in the sum of Kshs. 42, 802.

Analysis and Determination

32. Having considered the pleadings, the court record and submissions, the issues arising for my determination are whether the redundancy carried out by the Respondents was lawful and whether the Claimants are entitled to any of the remedies sought in their Memorandum of Claim.
33. Redundancy process is provided for in section 40(1) as follows:
 40. Termination on account of redundancy
 - (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;



- (e) the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
- (f) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash; (g) 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.

34. In the instant case the process of redundancy was commenced by the 1st Respondent's letter dated 18th January, 2017 notifying the County Labour Officer, Uasin Gishu, of the intention to carry out redundancy. The letter is reproduced below:

Kapil Bakery Ltd

Our ref: Kapil/adm./2017 18/01/2017

The County Labour Officer.

Uasin Gishu County

Box 110 -30100

Eldoret

Dear Sir,

Re: Notice Of Our Intended Redudancy And Termination Of Our Employees:

The management of Kapil Bakery Ltd would like to inform you that due to unavoidable circumstances that we are intending to close down our Business.

We wish to state that the main reason is due to harsh business environment that curtailed us for long (quite some time) thus operating at extreme loss.

Upon the same we are writing to you in compliance with provisions of *Employment Act* No, 11 of 2007, Section 40, that you may guide and direct us in the right legal manner that we are required lawfully to cany out this redundancy.

We don't have a recognition agreement with any union. We intend to close shop (our Business) and pay off all our workers as per the provisions of the law governing redundancy forthwith.

Kindly expedite

With much thanks,

Yours faithfully,

For: Kapil Bakery Ltd

Signed

Kantilal V. Rabdiy – 0712819200

Manager

35. The County Labour Officer responded the same day as follows:

Ministry Of Labour, Social Security And Services



RefNo. MLSS/ELD/LD64/2017

DATE:18/01/2017

The Manager

Kapil Bakery Ltd

BOX 110 -30100

Eldoret

Re:intended Redudancy

I am in receipt of your letter Ref No Kapil/adm/2017 dated 18th January 2017 in which you notified this office of your intention to declare your workers redundant and the contents therein noted with regret.

It is the considered advice of this office that you fully adhere with the provisions of Section 40 (1) in implementing your plans.

Kindly avail your payment records for perusal once you clear with the workers.

Yours faithfully

Signed

Boaz Musandu

County Labour Officer

Uasin Gishu

36. The Respondents thereafter tabulated the redundancy benefits for each employee and submitted the same to the County Labour Officer as directed in the letter dated 18th January, 2017. By letter dated 22nd February, 2017 the County Labour Officer confirmed that the calculations by the Respondents as submitted to the County Labour Office were correct and gave the green light for the Respondents to go ahead and pay.
37. The documents at pages 9 to 30 of the Respondents' bundle are calculations signed by the employees. They have the name, identity number and signature of each of the Claimants.
38. I have perused the calculations by the Respondents and note that they consist of only severance pay and gratuity. The severance pay is for the years. There is no clarity on how the tabulation was arrived at as no distinction is made between gratuity and severance pay. No explanation is given on the mis up of the two in the tabulation of the payments.
39. Further, section 40 clearly sets out all terminal dues payable upon redundancy to include notice and leave due. The tabulation by the Respondents does not indicate that these were done.
40. According to the County Labour Officer, the employees either went on leave or were paid in lieu thereof by the Respondents. Although the Claimants claimed under this head, no evidence of either leave taken or paid for in lieu was adduced by either the Respondents or the Labour Officer.
41. There is further no evidence that the prorated leave of 2 months was paid nor was a breakdown of how much is owed to each employee produced in court.
42. No mention is made by the Respondents regarding the averments that some of the Claimants were underpaid, worked overtime, on off days and public holidays without pay. There is further no



evidence of payment for notice. From the evidence on record, the Claimants were not given notice of termination under section 40(1)(f). What the Respondents did was give notification under section 40(1)(b) which in any event was not done according to the Act which provides that where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer.

43. It was incumbent upon the Respondents to demonstrate compliance by producing the employment records in respect of the said payments. The Respondents cannot use the County Labour Officer's word as proof of payment. The evidence produced before the Labour Officer must be produced before this court for verification. The Labour Officer's word is not evidence of payment or compliance.
44. I have looked at the calculations by the Claimants and apart from the inclusion of compensation, I find the tabulations accurate. I have noted from the calculations that they are limited to the years 2016 and 2017 only.
45. I have further noted the acknowledgment that the Claimants were paid overtime of Kshs. 500 daily irrespective of the number of days worked or the day on which the overtime was done without distinction of overtime done on normal working days attracting payment at 1.5 times the normal hourly or daily rate of pay and overtime on rest days and public holidays which attract payment at double the normal hourly rate of pay.
46. In this regard reference should be made to the provisions of rule 6 and 7 of the Regulation of Wages and Conditions of Employment (General) Order which provide:

6. Overtime

(1) Overtime shall be payable at the following rates—

- (a) for time worked in excess of the normal number of hours per week at one and one-half times the normal hourly rate;
- (b) for time worked on the employees normal rest day or public holiday at twice the normal hourly rate.

(2) For the purpose of calculating payments for overtime in accordance with subparagraph (1), the basic hourly rate shall, where the employees are not employed by the hour, be deemed to be not less than one two-hundred-and twenty-fifth of the employee's basic minimum monthly wage.

(3) Notwithstanding subparagraph (1) and (2) of this paragraph and paragraph 5, overtime plus time worked in normal hours per week shall not exceed the following number of hours in any period of two consecutive weeks—

- (a) one hundred and forty-four hours for employees engaged in night work;
- (b) one hundred and sixteen hours for all other adult employees.

[L.N. 17/1987, r. 2(b), L.N. 97/1987, r. 2(b).]

7. Weekly rest Every employee shall be entitled to one whole rest day in each week: Provided that —

- (i) an employer and his employee may, by mutual consent, agree to the deferment of the employee's rest day and the rest day so deferred may be taken by the employee on a subsequent day or may, subject to a maximum accumulation of fourteen such rest days



at any one time, be accumulated and taken, as leave with full pay in addition to the employee's entitlement to annual leave with full pay under paragraph 9;

- (ii) the weekly rest day of a person under the age of sixteen years shall not be so deferred.

[L.N. 17/1987, r. 2(c), L.N. 97/1987, r. 2(c).

47. I therefore find that there is no evidence that apart from payment of severance pay the Respondents complied with payment of terminal dues to the Claimants in accordance with section 40(1) of the Act.

48. Going by the salary used by the Respondents to tabulate severance/gratuity to the Claimants, the proper tabulation of the terminal dues for the Claimants should be set out below. I have included pay in lieu of notice under section 40(1)(b) and 40(1)(f) of the Act. I have further included pay in lieu of leave as confirmed by the County Labour Officer that the Claimants were not paid. Overtime has been excluded as the Claimants did not adduce evidence on how they arrived at the figures claimed.

1st Claimant: Samuel Gechiko

Worked for 8 years (2008-2016)

Last salary: Kshs. 18,420

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 18,420
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 18,420
 - iii. Severance pay Kshs. 18,420/30x8 Kshs. 73,680
 - iv. Pro-rata leave Kshs. 8,997.90
- Total 119,517.90

2nd Claimant: Stephen Kipruto Kosgei

Worked for 6 years [2010-2016]

Last salary Kshs. 14,309

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 14,309
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 14,309
 - iii. Severance pay Ksh.42,927
 - iv. Pro-rata leave Kshs.4,042.90
- Total Kshs. 75,587.90

3rd Claimant: Josephat Kipkosgei Koech 01/09/2010

Worked for 6 years (2010-2016)

Last salary Kshs. 16,297

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,297
- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,297
- iii. Severance pay Ksh.48,485



- iv. Pro-rata leave Kshs.1,592.15
Total Kshs.82,671.15
4th Claimant Gedion Kipchirchir Limo 01/01/2016
Worked for 10 years 2006-2016
Last salary 16,297
- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,297
- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,297
- iii. Severance pay Kshs. 81,485
- iv. Pro-rata leave Kshs.7,960.75
Total Ksh. 122,039.75
5th Claimant: Geoffrey Muhongo Kinuthia 01/02/2011
Worked for 5 years (2011-2016)
Last Salary Kshs. 13,798
- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 13,798
- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 13,798
- iii. Severance pay Ksh.34,495
- iv. Pro-rata leave Kshs.1,347.95
Total Kshs.63,438.95
6th Claimant: Gabriel Gwayera 6th Claimant 01/08/2009
Worked for 7 years (2009 – 2016)
Last Salary Ksh. 17,738
- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 13,798
- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 13,798
- iii. Severance pay Kshs. 62,083
- iv. Pro-rata leave Kshs.1,799.60
Total. Kshs. 91,478.60
7th Claimant: Matroba Indusa Waini 01/10/2007
Worked for 10 years (2006-2016)
Last Salary Kshs. 13,287
- i. One months' salary in lieu of notice under



section 40(1)(f) Kshs. 13,287

- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 13,287
 - iii. Severance pay Kshs.66,435
 - iv. Pro-rata leave Kshs.1,347.95
- Total Kshs.94,356.95

8th Claimant: Khaemba Yamame Robert -

Worked for 9 years

Last Salary Ksh.18,420

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 18,420
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 18,420
 - iii. Severance pay Kshs.82,890
 - iv. Prorate leave Kshs. 8,997.90
- Total Kshs.8,997.90

9th Claimant: Alexander Vushulu Madegwa 01/06/2007

Worked for 9 years (2007-2016)

Last Salary Kshs. 16,297

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,297
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,297
 - iii. Severance pay Kshs.73,336.50
 - iv. Pro-rata leave Kshs.7,793.10
- Total Kshs. 113,723.60

10th Claimant: Peter Wamalwa Wekesa 01/12/2010

Worked for 5 years (2011-2016)

Last salary 16,900

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,900
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,900
 - iii. Severance pay Kshs.42,250
 - iv. Prorate leave Kshs.4,776.45
- Total Kshs. 80,826.45

11th Claimant: Edwin Kiprotich Tendenei 01/03/2012



Worked for 4 years (2012-2016)

Last Salary Kshs. 13,798

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 13,798
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 13,798
 - iii. Severance pay Kshs.27,596
 - iv. Pro-rata leave Kshs.6,739.80
- Total Ksh.61,931.80

12th Claimant: Aron Kura 01/09/2010

Worked for 6 years (2010-2016)

Last Salary Kshs. 14,309

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 14,309
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 14,309
 - iii. Severance pay Kshs.42,927
 - iv. Pro-rata leave Kshs.4,043.90
- Total Kshs. 75,588.90

13th Claimant: Samson Kiprop Cheruiyot 01/01/2006

Worked for 10 years

Last Salary Kshs. 22,719

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 22,719
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 22,719
 - iii. Severance pay Kshs.113,595
 - iv. Pro-rata leave Kshs.5,561.50
- Total Kshs. 164,594.50

14th Claimant: Simon Shilago Kalakacha 01/06/2010

Worked for 6 years

Last Salary Kshs. 13,798

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 13,798
- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 13,798
- iii. Severance pay Kshs.41,394



- iv. Pro-rata leave Kshs.1,347.95 Total Kshs. 70,337.97
15th Claimant: Ali Kipkemboi Cheptot 01/08/2009
Worked for 7 years (2009-2016)
Last Salary Kshs. 19,120
 - i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 19,120
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 19,120
 - iii. Severance pay Kshs.66,920
 - iv. Prorate leave Kshs.5,398.90
Total Kshs. 110,558.90
- 16th Claimant: Patrick Linyali Muhongo 01/01/2016
Worked for 10 years (2006-2016)
Last Salary Kshs. 16,900
 - i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,900
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,900
 - iii. Severance pay Kshs.84,500
 - iv. Pro-rata leave Kshs.4,776.00
Total Kshs. 123,076
- 17th Claimant: Samuel K. Masinde 01/09/2010
Worked for 6 years (2010 – 2016)
Last Salary 16,900
 - i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,900
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,900
 - iii. Severance pay Kshs.50,700
 - iv. Pro-rata leave Kshs.14,329.35
Total Kshs. 98,829.35
- 18th Claimant: Evans Okiyo Ekasete 01/03/2006
Worked for 10 (2006-2016)
Last Salary Kshs. 16,297
 - i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,297



- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,297
- iii. Severance pay Ksh.81,485
- iv. Pro-rata leave Kshs.2,388.20
Total Kshs.116,467.20
19th Claimant: John Mburika Ehenzo 01/05/2009
Worked for 7 years (2009-2017)
Last Salary Kshs.16,900
- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,900
- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,900
- iii. Severance pay Ksh.59,150
- iv. Pro-rata leave Kshs.4,776.45
Total Kshs. 97,726.45
20th Claimant: Ronald Adira Asingira 01/02/2007
Worked for 10 years (2006-2016)
Last Salary Kshs. 18,420
- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 18,420
- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 18,420
- iii. Severance pay Kshs.92,100
- iv. Pro-rata leave Kshs.5,398.90
Total Kshs.134,338.90
21st Claimant: Leonard Otundo Santos 01/08/2010
Worked for 6 years (2010-2016)
Last Salary Kshs. 16,297
- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 16,297
- ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 16,297
- iii. Severance pay Kshs.48,891
- iv. Pro-rata leave Kshs.7,960.75
Total Kshs.89,445.75
22nd Claimant: John (Johana) Amukune 01/02/2006
Worked for 10 years (2006-2016)



Last Salary Kshs. 19,653

- i. One months' salary in lieu of notice under section 40(1)(f) Kshs. 19,653
 - ii. One months' salary in lieu of notification of redundancy under section 40(1)(f) Kshs. 19,653
 - iii. Severance pay Kshs.98,265
 - iv. Prorate leave Kshs.8,314.73
- Total Kshs.145,885.73

49. In addition to the severance each Claimant is entitled to one months salary in lieu of notice which I award them.
50. The Claimants are further entitled to prorate leave which I award them.
51. The Claimants did not adduce any evidence to support their claim for underpayments. The prayer is declined.
52. The Respondent having failed to give notification to each employee under section 40(1)(b), I award each one of them one month's salary in lieu of the said notification.
53. The redundancies having been for valid reason, the prayer for compensation for unfair or wrongful termination is declined.
54. As I have observed above, the Claimant were paid Kshs. 500 per day for overtime irrespective of he day worked, whether it was a rest day, public holiday or a working day. The Respondent did not make any comment on their prayer for overtime. Each of them is awarded an extra Kshs.500 for one rest day per week and for 11 public holidays when they were entitled to overtime pay at double the normal rate, making a total of $(52+11=63 \times 500=31,500)$. I award the Claimants Kshs. 31,500 on account of overtime which I will award for only one year.
55. The total award for each Claimant is set out in paragraph 48 above less payments already received.
56. The Respondent shall pay the Claimant's costs for this suit.
57. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 2ND DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

