



**Mureu v Ressourcethica Kenya Limited (Cause E463 of 2023)
[2025] KEELRC 1912 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1912 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E463 OF 2023**

SC RUTTO, J

JUNE 27, 2025

BETWEEN

JANE WANGARE MUREU CLAIMANT

AND

RESSOURCETHICA KENYA LIMITED RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim dated 7th June 2023, the Claimant avers that on or around 14th January 2022, she was employed by the Respondent as a Medical Sales Representative-Sanofi, on permanent and pensionable terms.
2. According to the Claimant, she consistently performed her role with diligence and did not undergo any disciplinary action, nor did she receive any warning on her performance.
3. The employment relationship appears to have been short-lived as the Claimant avers that on 17th January 2023, the Respondent's Country Manager, Patrick Giathi summoned her to his office and gave her a letter terminating her employment effective immediately on account of redundancy. Through the letter, she was provided with a tabulation of her purported final dues amounting to Kshs 347,480/= . The letter was unsigned by the Respondent and upon enquiry, she was told she had to sign and accept the terms of the letter in order for her final dues to be processed.
4. The Claimant further avers that the Respondent's Country Manager orally informed her that the decision declaring her redundant had been made and that she should cease attending the office. She acknowledged receipt of the letter but declined to sign it.
5. It is the Claimant's contention that her termination from employment was unfair, unlawful and in breach of her contract of employment and the law.



6. The Claimant further avers that by a letter dated 23rd January 2023, she demanded that the Respondent makes good its statutory and contractual obligations and pay the amounts particularised therein. In turn, she was issued with a show cause letter backdated to 14th January 2023 under the cover of an email dated 15th February 2023.
7. She responded to the show cause letter through her advocates by a letter dated 17th February 2023. She was invited for a disciplinary hearing on two occasions but did not attend as she had ceased being an employee of the Respondent.
8. The Claimant avers that the Respondent purported to summarily dismiss her from employment for failure to attend the disciplinary hearing scheduled for 27th February 2023.
9. According to the Claimant, the actions of the Respondent after it had already terminated her employment were not only malicious, in bad faith and prejudicial, but were a mere sham intended to regularise the Respondent's unlawful conduct.
10. The Claimant contends that as a result of the Respondent's ill treatment and unlawful actions, she has suffered immense loss entitling her to compensation.
11. It is against this background that the Claimant seeks the following reliefs against the Respondent:
 - a. A declaration that the termination of the Claimant's employment by way of redundancy by the Respondent was unfair and unlawful;
 - b. A declaration that the Claimant was unlawfully discriminated against by the Respondent entitling the Claimant to damages;
 - c. A declaration that the egregious conduct by the Respondent in dealing with the Claimant amounts to unfair labour practices entitling the Claimant to damages;
 - d. Judgment in the sum of Kshs.5,734,223.1 for:
 - i. Kshs 186,214/- being one month's salary in lieu of notice;
 - ii. Kshs 186,214/-being ex gratia payment;
 - iii. Kshs. 98,508/- being salary for the days worked in January 2023;
 - iv. Kshs. 17,384/- being payment for accrued leave days;
 - v. Kshs.101,682/-being statutory redundancy pay;
 - vi. Kshs. 162,900/-being unpaid house allowance;
 - vii. Kshs 2,234,568/- being 12 months' compensation for unfair dismissal;
 - viii. Kshs 2,234,568/- being 12 months' compensation for unlawful dismissal;
 - ix. Kshs. 1,910/- being reimbursable expenses for the month of November 2022 to January 2023;
 - x. The sum of Kshs. 391,049.40 on account of the retrenchment cover which the Respondent prevented the Claimant from accessing.
 - xi. The sum of Kshs.119,225.70 being the accrued outstanding amounts due on the loan.



- e. Damages for unlawful discrimination and unfair labour practices to be assessed by this Honourable Court;
 - f. Interest on (d) and (e) above from the date of termination until payment in full; and
 - g. Costs of the Claim.
12. In response to the Claim, the Respondent has admitted that there was a meeting with the Claimant and proposals made. Its point of departure is that the Claimant chose to abandon work thereafter. That following the Claimant's absenteeism with no official leave, attempts were made to reach her several times via phone and email to no avail. The Claimant was issued with a Notice to Show Cause, which was erroneously dated 14th January 2023.
13. The Respondent further avers that the allegations against the Claimant were particular and required a response and at the very least, attendance to the hearing.
14. The Respondent further contends that the Claimant was treated fairly during the employment and never, at any point before this suit, did she claim she was unfairly terminated.
15. On account of the foregoing, the Respondent prays for a declaration that the termination of the Claimant's employment was within the law and an order that the Claimant bears the costs of this suit on a full indemnity basis with interest at court rates.
16. The matter proceeded for hearing on 6th March 2025, during which both sides called oral evidence.

Claimant's Case

17. The Claimant testified in support of her case and at the outset, she sought to adopt her Memorandum of Claim, Verifying Affidavit, witness statement, as well as the list and bundle of documents filed alongside the Memorandum of Claim to constitute her evidence in chief.
18. The Claimant averred that during her employment, she noted that the Respondent's Country Manager had taken a dislike to her for no reason.
19. The Claimant further averred that the Respondent also failed to pay her any housing allowance during this period. She did not complain as she did not want to lose her job, which was her only source of income.
20. She avers that despite this treatment, she diligently and faithfully executed her duties, and at no time was she subjected to disciplinary proceedings on account of her conduct or performance.
21. The Claimant averred that her role was integral to the Sanofi team as it involved, among others, promoting their product portfolio to healthcare professionals, organizing PR, analyzing the results and implementing corrective and development actions where necessary, performing competitive intelligence and handling all questions presented about the product.
22. The Claimant stated that, sometimes in 2022, two managers from the Sanofi team resigned and the Respondent's Country Manager, Patrick Giathi, took over the duties of her line manager.
23. The Claimant averred that on 8th December 2022, with the approval of the Human Resources Department, she proceeded for her annual leave. On 9th January 2023, she reported back to the office from the Christmas holidays and attended a meeting on the same day. During this meeting, the Respondent's Country Manager informed them that the Respondent would be restructuring its



business. He, however clarified that no one would lose their job as it was just a reorganization of the business.

24. It therefore came as a surprise to her when, on or around 17th January 2023, the Respondent informed her that her position had been declared redundant following a restructure of her team. On this basis, she was informed that her contract had been terminated effective immediately.
25. Annexed to the letter of termination was an addendum containing what the Respondent deemed to be her severance package amounting to Kshs 347,480.00. The Claimant contended that the Respondent did not pay her this money.
26. The Claimant further averred that despite the Respondent stating in the letter of termination that the Sanofi business in Kenya did not meet the expectations of the Business Unit Manager, hence the decision to restructure the team, she is the only person whose employment was terminated. In her view, this was discriminatory given that there were no criteria established or applied to declare her redundant.
27. The Claimant further averred that prior to the abrupt termination, she was never informed, notified or consulted on any possible restructuring and its effect on her position.
28. It was the Claimant's view that the termination of her employment was unlawful and unfair because the Respondent did not follow any lawful process prior to terminating her Contract on account of redundancy.
29. The Claimant further averred that as she had been informed that the termination was to take effect immediately, she had no choice but to cease attending the office. She followed up with the Country Manager to obtain a signed copy of the termination letter to enable her follow up on a redundancy policy she had taken out during her employment. He was quite rude to her and insisted that he would only sign the termination letter after she signed it, a demand she found to be strange.
30. She later learnt that on 18th January 2023, the Country Manager had convened another meeting during which he informed the team that she had ceased to be an employee of the Respondent. She was not invited to this meeting.
31. On 20th January 2023, she received the same termination letter from the Respondent via email together with her final pay slip. However, unlike the pay slip she received physically on 17th January 2023, this version had a different computation of her final dues, bringing the final tally to the sum of Kshs. 358,780.00. In the email, the Respondent informed her that her final dues would be deposited in her bank account once she returned a signed copy of the termination letter to the Respondent.
32. The Claimant added that on or around 2nd February 2023, she received Kshs. 109,115.95 from the Respondent, which was directly deposited into her account. There was however no accompanying communication to clarify what this payment was for.
33. Feeling aggrieved and frustrated, she instructed her advocates to issue a demand letter to the Respondent for the unfair and discriminatory redundancy process.
34. She was therefore surprised when, under the cover of an email dated 15th February 2023, she received a letter from the Respondent purportedly dated 14th January 2023. This letter was a purported Notice to Show Cause that contained several allegations against her, including absenteeism from 18th January 2023, willfully refusing to carry out her duties following alleged discussions of a possible mutual separation, and insubordination arising from the failure to give a response following the alleged discussions. She was also invited to attend a disciplinary hearing to address these allegations.



35. According to the Claimant, the Respondent issued this purported "Notice to Show Cause" in bad faith despite being well aware that the alleged absenteeism occurred after it had already terminated her employment contract on grounds of redundancy.
36. It was her contention that the purported Notice to Show Cause also contained factual inaccuracies, as she had never attended any discussions or received any proposals regarding mutual separation from her employment. Accordingly, she believes that the Respondent's actions towards her were in bad faith and actuated by malice.
37. Her advocates wrote to the Respondent on 17th February 2023 and required it to cease harassing her since she was no longer its employee.
38. The Respondent replied to her demand by a letter dated 1st February 2023, sent to her advocates. It continued to falsely allege that she had absconded work since 18th January 2023 and that, as of that date, the Respondent still considered her its employee. On 23rd February 2023, the Respondent followed up by sending her a second Notice to Show Cause and invitation for a hearing. Since the hearing was to be held more than four weeks after her employment was effectively terminated, she refused to attend it.
39. Following this, the Respondent sent her a Notice of Summary Dismissal dated 8th March 2023, alleging that it had summarily dismissed her from employment after she failed to attend the disciplinary hearing held on 27th February 2023.
40. Subsequently, she received payment amounting to Kshs. 160,874/- from the Respondent by way of a cheque dated 14th April 2023.
41. The Claimant added that when she was employed, she had taken an insurance policy to safeguard her against the loss of employment. After declaring her redundant, the Respondent maliciously declined to sign a Retrenchment Claim Form. As a result of not being able to claim against this policy, she has suffered loss to the tune of Kshs. 391,049.40 which is the payment she would have received under the cover.
42. That she had also taken a loan of Kshs. 131,000/- which she was servicing during her employment. This is now in arrears of Kshs. 119,225.70 as she has not been able to settle the monthly repayments, exposing her to possible sanctions, especially being reported as a defaulter under the Banking (Credit Reference Bureau) Regulations, 2020 which will damage her credit score. She avers that had the Respondent signed her Claim Form, she would have benefited by having her loan repayments stopped for the period she remained unemployed.

Respondent's Case

43. The Respondent called oral evidence through Ms. Taman Tano, who testified as RW1. She identified herself as the Respondent's Finance Manager and equally, she adopted her witness statement together with the list and bundle of documents filed on behalf of the Respondent to constitute her evidence in chief.
44. In her evidence, RW1 stated that on 9th January 2023, there was a meeting held with all the staff members informing them of a planned restructure of the Company, which was intended to be on a voluntary basis in the first instance. If not, the company would seek legal advice on how to proceed legally.
45. RW1 averred that the Claimant proposed that she be allowed to leave on terms to be agreed on.



46. That on 18th January 2023, the Company held a talk with the Claimant on a mutual separation and severance package, and made a proposal to her asking her to consider it and see if it fits her wishes. Thereafter, she was to comment or make a counterproposal. A scribbled down draft was given to her at her request to allow her to provide her counterproposal, if any, or reject it.
47. RW1 stated that unbeknownst to the company, the Claimant had devised a plan not to go back.
48. That on 20th January 2023, the Company via an email prompted the Claimant to respond to the proposal, but she never responded.
49. RW1 averred that at this time, the Claimant had already absconded her duties, despite the then Country Manager, Patrick Giathi, trying to reach out.
50. That a Notice to Show Cause was issued requiring the Claimant to attend a hearing on 22nd February 2023, which she never showed up for.
51. RW1 further averred that on 23rd February 2023, the Company gave the Claimant the benefit of doubt and sent out a second letter to her inviting her for a hearing over the same allegations of absenteeism, which was to be held on 27th February 2023. She never responded nor attended the hearing.
52. That on 8th March 2023, the Company summarily dismissed the Claimant from employment for failing to attend the scheduled hearings or receive any response from her.
53. On 14th April 2023, the Company issued a cheque of Kshs 160,874.00 as the Claimant's dues. The Claimant returned the Company's tablet, and the relationship ended.
54. RW1 further stated that the Claimant asked the Company to fill a form for her bank, stating that she was retrenched. The Respondent received legal advice not to lie about it as they are law-abiding, and they humbly declined.

Submissions

55. It was submitted on the part of the Claimant that her redundancy was unlawful and unprocedural for failing to comply with Section 40(1) (b) of the [Employment Act](#), in that the Claimant and the local labour officer were not notified of the intention to declare her redundant at least one month prior to the redundancy. To reinforce this argument, reliance was placed on the case of Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others (2014) eKLR.
56. Referencing the case of Cargill Kenya Limited v Mwaka & 3 others [2021] eKLR and Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others (supra), the Court was urged to find that the Claimant's dismissal was unfair for want of the consultations envisaged under section 40 of the [Employment Act](#).
57. In further submission, the Claimant stated that the Respondent has not disclosed the criteria, if any used to determine that she was redundant. In the Claimant's opinion, her termination on account of redundancy was simply a disguise employed by the Respondent to terminate her employment summarily. To this end, the case of Kimathi v Ericsson Kenya Limited (2023) eKLR was referenced in support of this argument.
58. The Court was further urged to find that the Respondent's action of singling the Claimant out and terminating her contract on account of redundancy while retaining all other employees in her team was without basis and discriminatory. In support of this submission, reliance was placed on the case of Noor Mohamed v Red Court Hotel Limited t/a Boma Hotels (2020) eKLR.



59. The Court was further urged to find that the Respondent's conduct was carried out in bad faith and constitutes unfair labour practice in violation of Article 41 of *the Constitution*. On this issue, reliance was placed on the case of *George Onyango Akuli v G4S Security Services Kenya Ltd (2013) eKLR*.
60. On the other hand, the Respondent submitted that the Claimant did not produce anything to show that she was declared redundant.
61. The Respondent further submitted that there was no requirement for the Claimant to accept the proposal as she had room to negotiate or reject it altogether. In the same vein, the Respondent cited the case of *Muyiwa Gbenga-Oluwatove v Reckitt Bensker South Africa (Pty) Ltd & another* and argued that there was nothing illegal in making the offer.
62. Citing the cases of *Joseph Nzioka v Smart Coatings Limited (2017) eKLR* and *Rodgers Titus Wasike v General Esat Africa Limited (2020) eKLR*, the Respondent further submitted that the Claimant confirmed that she never attended work after the proposal/offer was made to her.
63. With respect to procedural propriety, the Respondent submitted that the Claimant admitted receiving a Notice to Show Cause requiring her to attend a hearing scheduled for 22nd February 2023. In the same breath, the Respondent posited that the Claimant confirmed that she refused to attend the hearing, giving a flimsy reason that she had already hired a lawyer, yet did not write an email, WhatsApp, or text rebutting the allegation that she had absconded. In support of this position, the Respondent sought to rely on the cases of *John Mose Amiga v Dominion Vegetables Ltd, Industrial Case No 77 of 2012*, *Jared Aimba v Fina Bank Ltd, Industrial Case No. 525 (N) of 2009* and *Mathew Lucy Cherusa v Poverelle Sisters of Belgano t/a Blessed Louis Palazzalo Health Centre (2013) eKLR*. In the Respondent's view, the Claimant's termination from employment was therefore lawful.
64. In conclusion, the Respondent submitted that it had clearly demonstrated that the termination of the Claimant's employment was lawful, procedurally fair, and justified under Section 44(4) (a) of the *Employment Act*. According to the Respondent, it acted in good faith at all times by initiating discussions on mutual separation, issuing multiple invitations to disciplinary hearings and ultimately settling all terminal dues. That in stark contrast, the Claimant wilfully disregarded the due process afforded to her, thereby forfeiting any legitimate claim of unfair termination.

Analysis and determination

65. Flowing from the record, the following issues stand out for determination:
- i. In what manner and on what grounds did the separation in the employment relationship occur?
 - ii. Was the termination of the Claimant from employment substantively justified?
 - iii. Was the Claimant subjected to a fair process prior to being terminated from employment?
 - iv. Is the Claimant entitled to the reliefs sought?

The manner of separation and grounds

66. Both parties have taken diametrically opposite positions with respect to the manner in which the separation in the employment relationship occurred and the grounds thereof.
67. Whereas the Claimant avers that her employment was terminated by way of redundancy on 17th January 2023, the Respondent holds otherwise and contends that the Claimant was summarily dismissed from employment on 8th March 2023 for failure to attend a scheduled disciplinary hearing.



68. It is the Claimant's case that on 17th January 2023, the Respondent informed her that her position had been declared redundant following a restructure of her team (Sanofi). According to her, she was informed that her contract had been terminated effective immediately.
69. In her evidence, RW1 admitted that there was a planned restructure of the Respondent company, which was to be on a voluntary basis in the first instance. That the Claimant proposed to be allowed to leave on terms to be agreed on, and on 18th January 2023, the Respondent made a proposal to the Claimant on a mutual separation and severance package, which she was to consider. According to RW1, the Claimant was to make a counterproposal but unbeknownst to the Respondent, she had devised a plan not to go back to work.
70. Both parties exhibited a copy of the letter dated 17th January 2023, which, according to the Claimant, constitutes her letter of termination. I will reproduce that letter for context purposes:

“Termination letter

Ressourcethica Kenya Ltd (RKL) has been promoting Sanofi products in Kenya since October 2020 and you have been a member of the sales team promoting Sanofi products under RKL.

Sanofi business inside Groupe-Ethica is managed by the Business Unit manager (BUM), who has overall responsibility of managing Sanofi business in the various markets in Sub-Saharan Africa-Kenya included The Sanofi business in Kenya did not meet the expectations of the BUM. Based on this, the BUM has made a decision to re-structure the Kenya team promoting Sanofi products. Regrettably, your position as a Medical Sales Representative under RKL has become redundant as a result of this re-structuring.

We wish to thank you most sincerely for your input during the period you were working for us, while promoting Sanofi brands. Your dedication and professionalism during your assignments is well noted and appreciated.

In line with RKL contract with you, RKL shall pay into your account the dues captured in the attached addendum. Your last working day with us shall be 17th January 2023. Upon receipt of the amount net of government taxes, please confirm that you have no other further claim whatsoever from Ressourcethica Kenya Ltd.

We wish you all the best in all your future endeavors.”

71. Contrary to the Respondent's assertions, a clear reading of the letter reproduced above does not express mutuality in the separation. Indeed, it is an unequivocal termination of employment from the Respondent's end. As a matter of fact, the letter is very clear that the Claimant was only required to confirm that she had no further claim against the Respondent upon receipt of the terminal dues particularized.
72. What is further discernible from the letter is that it was unequivocal that the Claimant's last date of employment was 17th January 2023.
73. What can be deduced up to that point is that the Respondent was very clear in its decision to separate with the Claimant. There were no two ways about it.
74. It is also apparent that the Respondent had already tabulated the Claimant's dues and there was no room for negotiations on the package. Indeed, and contrary to the assertions by RW1, there was no indication that the Claimant was to make a counter-proposal to the package.



75. Indeed, even the email of 20th January 2023, by the Respondent's Country Director, served as a mere reminder to the Claimant to sign her acceptance if she was in agreement with the package. From all indications, he was not inviting the Claimant to make a counter-proposal.
76. The foregoing discounts the Respondent's position that there were discussions towards mutual separation and that the Claimant was required to make a counterproposal, but she absented herself from work.
77. What is apparent from the record is nothing close to a mutual separation. Even remotely. An engagement towards mutual separation is very structured, clear and leaves no room for doubt as to the intention of the parties.
78. What clearly manifests in this case is that the Respondent had notified the Claimant of its decision to terminate her from employment, with the effective date of termination being 17th January 2023.
79. Having been notified as much in express terms, it is therefore not surprising that the Claimant stopped attending to her duties at the Respondent company with effect from the date indicated as her last day of duty. Indeed, it is apparent that the Claimant's conduct after the receipt of the letter of termination dated 17th January 2023 was largely informed by the express terms of the said letter. No doubt, it is that letter of 17th January 2023 that completely altered the relationship between the two parties moving forward.
80. What's more, the Respondent did not at any time, before the issuance of the notice to Show Cause, communicate to the Claimant a different position other than the one expressed in the letter of 17th January 2023.
81. Further to the foregoing, the Claimant's pay slip for the month of January 2023 bears the term "Final dues". This further confirms the Respondent's clear intention to separate with the Claimant.
82. If I may say, the Respondent's version that the Claimant absconded work instead of making a counter-proposal is rather odd. Here is why. In the email of 20th January 2023, the Respondent's Country Director merely reminded the Claimant to sign off, indicating her acceptance if she was in agreement with the Respondent's package. Oddly enough, the Respondent's Country Director did not mention the Claimant's unauthorized absence from work or ask her to explain her whereabouts. Worthy to note is that this was about two days from the date the Claimant had been notified of the decision to declare her redundant. Seemingly, the Respondent was unbothered by the Claimant's absence from work at that point (20th January 2023).
83. It was not until 15th February 2023, when the Respondent's Country Director served the Claimant with a Notice to Show Cause via email, citing her for absenteeism from 18th January 2023 and insubordination.
84. Indeed, one wonders why the Respondent's Country Director did not ask the Claimant to explain her absence from work in his email of 20th January 2023. Why did he have to wait until 15th February 2023 to cite the Claimant for absenteeism?
85. Coupled with the foregoing, it was notably strange that the Notice to Show Cause, while dated 14th January 2023, sought to cite the Claimant for absenteeism from 18th January 2023, a date in the future, and in addition, was dispatched a month later.
86. The foregoing set of circumstances leads me to conclude that the Claimant was indeed terminated from employment on 17th January 2023 on grounds of redundancy and that her disciplinary



proceedings on grounds of absenteeism and insubordination and subsequent summary dismissal were an afterthought. As a matter of fact, the subsequent disciplinary proceedings and summary dismissal were inconsequential.

87. Therefore, the Respondent cannot turn around and deny that it terminated the Claimant's employment effective 17th January 2023 on grounds of redundancy.
88. If I may add, the actions on the part of the Respondent demonstrated bad faith on its part and is a clear case of an unfair labour practice. It was quite disingenuous for the Respondent to inform the Claimant of her termination by way of redundancy with immediate effect and then commence disciplinary proceedings against her on the basis that she had absconded work.
89. That said, was the Claimant's termination on account of redundancy substantively fair?

Substantive justification for the Claimant's termination

90. As the Court has found herein, the Claimant was terminated from employment on account of redundancy through the letter dated 17th January 2023.
91. The question that this Court must now answer is whether the said termination passed the substantive test.
92. As can be discerned from Section 40 of the *Employment Act*, an employer is allowed to declare a redundancy. This right notwithstanding, an employer is duty-bound to prove that the termination of employment on grounds of redundancy is attributable to its operational requirements hence substantively justified. Such was the determination in the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR.
93. As expressed by the Respondent in the letter of termination dated 17th January 2023, the Business Unit Manager had made a decision to restructure the Kenyan team, promoting the Sanofi products and the Claimant's position as Medical Sales Representative had become redundant as a result of restructuring.
94. RW1 acknowledged during cross-examination that there was a restructuring exercise across many countries.
95. It was therefore reasonably expected that the Respondent would adduce evidence to confirm that indeed, there was a restructuring exercise affecting the Sanofi team in Kenya and that the Claimant's position as Medical Sales Representative had been declared redundant and fallen off the structure. Regrettably, this was not the case.
96. In the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [supra], the Court reckoned that, while there may be underlying causes leading to a true redundancy situation, such as reorganization, the employer must nevertheless show that the termination is attributable to the redundancy and that the services of the employee have been rendered superfluous or that the redundancy has resulted in the abolition of office, job or loss of employment.
97. In further analyzing the definition of the term redundancy, the Court held as follows:

“There are two broad aspects of this definition...The second aspect is that the loss of employment in redundancy has to be at no fault of the employee and the termination of employment arises “where the services of an employee are superfluous” through “the practices commonly known as abolition of office, job or occupation and loss of employment.” In this case, what I understand as required to be determined in this aspect of the definition of redundancy is whether the appellant abolished the offices, jobs or



occupations of the affected employees resulting in their services being superfluous hence their loss of employment. Corollary to that is the justification for that abolition, if the appellant indeed abolished their offices. Determination of these two aspects will, determine the first issue of whether or not the redundancy in this case was necessary.” Underlined for emphasis

98. Applying the above binding precedent to this case, the Court returns that the Respondent has failed to prove that the Claimant’s position of Medical Sales Representative had ceased to exist after the restructuring exercise.
99. This being the case, I cannot help but find that the Respondent has not proved to the requisite standard that there was substantive justification for the termination of the Claimant’s employment on account of redundancy.

Procedural fairness?

100. As to the procedural aspect of the redundancy process, Section 40(1) stipulates the following conditions that an employer must comply with prior to an employee’s termination from employment on account of redundancy:
 - 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.
101. With respect to the notice requirement under Section 40(1) (b), the record bears that the Claimant was issued with a Notice of Termination dated 17th January 2023. Notably, this was the same Notice that communicated the Respondent’s decision to terminate the Claimant’s employment on account of redundancy.
102. This Court is of the view that the notice contemplated under Section 40 (1) (b) is an “intention to declare a redundancy”. It is issued before the redundancy takes effect. In this case, the said notice was issued to the Claimant after her position had already been declared redundant. It was a notice declaring



the Claimant redundant as opposed to an “intention” to declare a redundancy as contemplated under Section 40 (1) (b) of the *Employment Act*.

103. My position is augmented by the determination in the case of *Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others* (supra) in which Maraga JA, (as he then was) expressed the following sentiments: -

“My understanding of this provision is that when an employer contemplates redundancy, he should first give a general notice of that intention to the employees likely to be affected or their union. It is that notice that will elicit consultation between the parties,”

104. Further, in the case of *The German School Society & another vs Ohany & another* [2023] KECA 894 (KLR), the Court of Appeal held that a notice to the employee/trade union/labour officer opens up the door for a consultative process with the key stakeholders.

105. In this case, it is evident that the notice issued to the Claimant was final in nature hence left no room for consultations.

106. It is also apparent that the Respondent failed to comply with the second part of Section 40(1) (b), seeing that there is no evidence that it notified the labour office of the notice to declare the redundancy.

107. To this end, the Court finds that the Respondent did not comply with the statutory requirement under Section 40 (1) (b) of the *Employment Act* and to that extent, is at fault.

108. The other requirement is in respect of the selection criteria stipulated under Section 40 (1) (c) of the *Employment Act*. With respect to this, the employer is required to prove that in the selection of employees to be declared redundant, it has paid 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.

109. My construction of Section 40(1) (c) of the *Employment Act* is that the selection criteria is applied across the particular class of employees to be affected by the redundancy. Therefore, it cannot be applied where the employees declared redundant are in different categories. The bottom line is that the roles affected and to which the selection criteria is being applied are similar and capable of comparison.

110. In the instant case, there was no indication or suggestion that there were other Medical Sales Representatives in the Sanofi team besides the Claimant.

111. Therefore, the Court finds that the requirement for selection under Section 40(1) (c) of the *Employment Act* is not relevant herein.

112. Turning to the requirement for consultations, the Respondent indicated that there were meetings with the Claimant prior to her being issued with the letter dated 17th January 2023. However, it is the Respondent’s position that these were geared towards a mutual separation.

113. Therefore, there is no evidence that the parties held pre-redundancy consultations in accordance with Article 13, Convention No. 158 - Recommendation No. 166 of the International Labour Organisation (ILO) convention.

114. As was held in *Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others* (supra), consultations are meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable. As such, consultations should not be cosmetic but rather meaningful and should be geared towards mitigating the adverse effects of the redundancy.



115. As the Court has found that there was no evidence that the parties undertook pre-redundancy consultations, I return that the Respondent is at fault to that extent.
116. As to the payments under Section 40(1) (e) (f) and (g) of the Act, it is notable that the Claimant was advised through the letter of termination dated 17th January 2023 of the dues payable to her following the termination. This included one month's salary in lieu of notice, one month's ex gratia payment as a token of appreciation, 15 days' salary for the year served in the Respondent's employment, reimbursable expenses for which she was required to provide receipts. This was in apparent compliance with the provisions of Section 40(1) (f) and (g) of the *Employment Act*.
117. What is conspicuously missing is the payment for accrued leave. This is further noting that the Respondent did not indicate that the Claimant did not have any pending leave days or better still, produce the Claimant's leave records, noting that it is the Respondent's duty as an employer to maintain leave records under Section 74(1) (f) of the *Employment Act*.
118. All in all, the Court finds that to a great extent, the Respondent did not comply with the provisions of Section 40 (1) of the *Employment Act* hence the Claimant's termination by way of redundancy cannot be said to have been procedurally fair.

Reliefs?

119. For starters, the Claimant is entitled to the benefits as tabulated by the Respondent in the addendum to the letter of termination dated 17th January 2023, amounting to Kshs. 537,856.00.
120. As the Court has found that the Respondent has failed to prove that the Claimant's termination by way of redundancy was substantively and procedurally fair, she is awarded compensatory damages equivalent to six (6) months of her gross salary. This award takes into account the length of the employment relationship as well as the conduct of the Respondent in disengaging with the Claimant. As the Court has found herein, the Respondent's actions against the Claimant constituted an unfair labour practice on its part.
121. The Claimant has sought to be paid the sum of Kshs 17,384.00 being payment for accrued leave. As indicated herein, the Respondent did not compute the Claimant's leave pay in the tabulations provided in the letter of termination, and further to that, did not produce her leave records to prove that she had no outstanding leave. As such, the Claimant's claim for leave pay was not controverted and she is entitled to the same.
122. The Claimant has further sought to be paid Kshs. 391,049.40 being the amount of the retrenchment cover which the Respondent prevented her from accessing. In support of this claim, the Claimant exhibited a copy of the insurance policy she had taken out in this regard. Clause 9.2 of the said policy provides that "in the event the life insured becomes retrenched during the term for which the cover is provided, a benefit equal to 70% of the monthly salary covered but not more than a salary of Kshs 150,000 p.m...This benefit will end at the earlier of the three (3) months or once the life assured continues to earn an income."
123. In her testimony before the Court, RW1 admitted that the Respondent declined to sign the Claimant's Retrenchment Claim Form. In essence, this inaction by the Respondent locked out the Claimant from benefiting from the insurance policy she had taken out. To this end, the Claimant is entitled to recover from the Respondent the amount she would have been paid had the Respondent done its part and facilitated her to access the benefit under the retrenchment cover. Be that as it may, this payment shall be based on the sum of Kshs 150,000.00, being the maximum salary amount provided in Clause 9.2 of the policy.



124. The claim for house allowance is declined as the Claimant's contract of employment indicates that her salary was consolidated and in gross. Section 31(2) of the Employment Act envisages salary consolidation, in which case, the employer is not expected to pay a separate amount as house allowance. As such, it is clear that as per the Claimant's contract of employment, the component of house allowance was subsumed in her consolidated salary.
125. The claim for reimbursable expenses is equally declined as the Claimant did not adduce evidence to prove that she incurred expenses of a reimbursable nature, which she was entitled to but was not paid.
126. The claim for the accrued sums of the loan is similarly declined.
127. The separate claim by the Claimant for general damages for unlawful discrimination and unfair labour practices is disallowed. On this issue, the Court adopts the position taken in the case of *G M V vs Bank of Africa Kenya Limited* [2013] eKLR, where it was held that violation of every conceivable contractual, statutory and constitutional right does not deserve a separate award of damages.

Orders

128. In the final analysis, the Claim is allowed and Judgment is entered in favour of the Claimant against the Respondent in the following manner: -
- a. A declaration that the termination of the Claimant from employment by way of redundancy was unfair and unlawful.
 - b. The Claimant is awarded the sum of Kshs 537,856.00 being the terminal benefits particularized in the addendum to the letter of termination dated 17th January 2023.
 - c. The Claimant is awarded compensatory damages in the sum of Kshs 1,117,284.00 being equivalent to six (6) months of her gross salary.
 - d. The Claimant is awarded 17,384.00 being payment of accrued leave.
 - e. The Claimant is awarded the sum of Kshs 315,000.00 (70% of 150,000 x 3) being the benefit she was entitled to in the retrenchment cover.
 - f. The total award is Kshs 1,987,524.00.
 - g. As the Claimant has admitted to receiving two (2) separate payments from the Respondent following her termination from employment on 17th January 2023, totaling the sum of Kshs 269,989.95, this shall be deducted from the total award. Therefore, this brings the final award to Kshs 1,717,534.05.
 - h. Interest on the amount in (g) at court rates from the date of Judgment until payment in full.
 - i. The Claimant shall have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Matara instructed by Ms. Ngige



For the Respondent Ms. Ndegwa

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

