



**United Millers Limited v Otieno (Appeal E077 of 2024)
[2025] KEELRC 1882 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1882 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E077 OF 2024**

**J RIKA, J
JUNE 27, 2025**

BETWEEN

UNITED MILLERS LIMITED APPELLANT

AND

SYLVENUS OTIENO RESPONDENT

*([An Appeal from the Judgment of the Hon. Chief Magistrate
Priscah Wamucii Nyota, dated 6th November 2024, in Nakuru
C.M.E&L.R.C Cause Number E291 of 2023, between the Parties herein])*

JUDGMENT

1. The Appeal herein bears the same factual and legal background to Nakuru E&LRC Appeal Number E076 of 2024, between United Millers Limited v. Daniel Shiraku Okusimba.
2. Like Okusimba, the Respondent herein, Sylvenus Otieno [also identified as Sylvanus in some documents], was an Employee of the Appellant, whose contract was terminated by the Appellant on account of redundancy.
3. He filed the Claim at the Trial Court for unfair and unlawful redundancy, and was granted equivalent of 6 months' salary in compensation for unfair termination.
4. The Trial Court found that, while other requirements under Section 40[1] of the *Employment Act* were satisfied by the Appellant, the requirement under Section 40[1][c] on selection criteria, was not satisfied.
5. The Appellant filed Memorandum of Appeal dated 19th November 2024 challenging this conclusion. Its position is that the Appellant closed down its operations at Nakuru Refinery where the Respondent worked as a Machine Attendant, and there was no requirement to apply the selection criteria, under Section 40 [1] [c] of the *Employment Act*.



6. Parties agreed that the Appeal is considered and determined on the strength of the Record of Appeal and Submissions filed by the Parties.

The Court Finds: -

7. The decision of this Court in Nakuru E&LRC Appeal Number E076 of 2024 [paragraph 1 of this Judgment], is adopted as the decision of this Court, in the Appeal herein.
8. The Court held that the Trial Court did not err in its evaluation of evidence and application of Section 40 [1] [c] of the *Employment Act*; there was no evidence presented by the Appellant establishing that its plant was shut down; the scaling down of operations, commenced in August 2021, suggested there remained a skeleton manpower; operations were not shown to have closed down altogether when the Appellant notified the Employees about redundancy in October 2021; and on the whole, the process was carried out without regard to the principle of redundancy consultation. At every turn, from August 2021 to October 2021, the Appellant was under obligation to consult its Employees. It did not do so, but only communicated its own unilateral decisions, captured in abrupt notices and internal memos.

It Is Ordered: -

- a. The Appeal is declined on the same grounds given by the Court in Appeal No. E076 of 2024 cited above.
- b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU, THIS 27TH DAY OF JUNE 2025.

**JAMES RIKA
JUDGE**

