



**Mwikali v Flame Tree Africa Limited (Cause E6-7 of 2021)
[2025] KEELRC 1809 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1809 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6-7 OF 2021
HS WASILWA, J
JUNE 19, 2025**

BETWEEN

NANCY MBATHA MWIKALI CLAIMANT

AND

FLAME TREE AFRICA LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Statement of Claim dated 22nd July 2021 and prays for judgment against the Respondent for:
 - a. General damages for unfair labour practices (24 months) – Kshs. 2,725,584/-
 - b. Compensation for unfair termination (24 months) – Kshs. 2,725,584/-
 - c. Compensation for 62 leave days – Kshs. 270,811/-
 - d. Salary for period between April/May 18, 2021 – Kshs. 113,566/-
 - e. Acting allowance for the position of the Finance Manager (12 months) – Kshs. 6,248,508/-
 - f. Return of personal effects and items.
 - g. Interest at the Court rate (a) (b) (c) (d) and (e) above.

Claimant's Case

2. The Claimant avers that she was an employee of the Respondent and its sister companies.
3. The Claimant avers that the Respondent is a subsidiary of FTG Holding Ltd and she was an employee of Happy Eaters (K) Ltd, a subsidiary of FTG Holdings Ltd until 28th February 2016.



4. The Claimant avers that on 26th February 2016, she was transferred from Happy Eaters (K) Ltd to the Respondent and she had no option other than accepting the transfer of service. The purpose of the transfer was to facilitate the issuance of a work permit to the then Finance Manager, Matthew Thomas and she was to be used as his understudy.
5. The Claimant avers that she diligently discharged her duties and that her performance was way above average. In early March 2020, her supervisor, Mr. Thomas Matthews, proceeded on terminal leave and subsequently left Kenya in June 2020.
6. The Claimant avers that on 13th March 2020, she became the acting Finance Manager after Mr. Thomas Matthews handed over his duties to her on the instruction of the Chief Executive Officer which duties she performed until 18th March 2018.
7. The Claimant avers in February 2021, the Respondent illegally and irregularly recruited Mr. Santosh Prakash as the new Accounts Manager and she was asked to train and induct him, which request she happily obliged for at least three months.
8. The Claimant avers that on 17th March 2021, she took a one-day emergency leave to visit her sick uncle at Makueni Level 4 Hospital with the approval of her new supervisor. While at Makueni, she received a call from Mr. Santhosh asking her to return to work at once as the General Manager needed to see her and she explained it would be impossible to reach the office before 3 pm as the journey back will take 3 hours to travel back.
9. She subsequently received a second call informing her that she should not travel but she must see the General Manager the following morning. She reported back the following day and after settling down, she went to see the General Manager in his office.
10. The Claimant avers that the General Manager issued her redundancy notice and she was asked to sign with Mr. Santhosh as the witness. She asked to read the contents before signing and on having the contents and effect thereof explained but to no avail.
11. Immediately after, security was called and she was escorted out of the Respondent's premises without an opportunity to even collect her personal effects which are still being held by the Respondent and they should be returned to her as soon as possible. That evening, the Respondent sent her a termination notice vide an email dated 18th March 2021
12. The Claimant avers that the Respondent breached and circumvented the redundancy and separation procedures set under the law and the termination of her employment was wrongful, unfair and illegal.
13. It is the Claimant's case that the purpose of issuing a work permit to foreign professionals is to transfer skills to locals; being Mr. Thomas Matthews' understudy for almost three years, she was recommended to take over as the Finance Manager. However, the Respondent used her to get Thomas Matthews' work permit and when he went on terminal leave, they decided to dump her.
14. The Claimant avers that no restructuring was done at the Respondent's premises and she was the only person declared redundant. Further, the duties she performed for many years still subsist with the Respondent and she has skills that could be used in different positions within the Respondent company.
15. The Claimant avers that if there was any redundancy done by the Respondent, the redundancy did not follow the procedure laid down in law and policy.



16. The Claimant avers that out of the accumulated leave days over the years, she had at least 366 days which remain unpaid.

Respondent's Case

17. In opposition to the Claim, the Respondent filed a Reply to Statement of Claim dated 30th August 2021.
18. The Respondent avers that the Claimant's transfer was done after an internal job vacancy arose for the position of Accounts Assistant at the Respondent. As per the Transfer of Employment letter dated 17th February 2016, her employment took effect on 1st March 2016.
19. Her salary was adjusted to Kshs 39,965 with house allowance of Kshs. 5,995 which was later reviewed upwards on 1st April 2018 to a basic salary of Kshs. 98,753 with house allowance of Kshs. 14,813. And at the time of the transfer, she was further paid one month's salary in lieu of notice and the terms and conditions of the previous contract remained the same.
20. The Respondent therefore denied that the purpose of the transfer was to facilitate the issuance of a work permit to Matthew Thomas and avers that he had worked at the Respondent's for over 15 years was instrumental in training several other employees of the Respondent and its subsidiaries.
21. It is the Respondent's case that the position of a Finance Manager was never vacant at anytime during the material time. Between June to October 2020, the then Finance Manager went on an extended leave of absence though he continued working remotely in line with Covid-19 guidelines for confidential reasons.
22. Subsequently, in October 2020, it was mutually agreed that his employment be terminated and a new Finance Manager was appointed in the same month.
23. During this period, the Claimant was never appointed as an acting Finance Manager nor did she act at any time in that capacity, she continued with her tasks as the Accounts Assistant. However, every member of staff in the Accounts Department was involved in taking up tasks of the Finance Manager until the separation and new appointment was done.
24. The Respondent avers that it is custom for existing employees to induct and train new employees on the going-ins in the company as and when need be, the Claimant was not exempted from taking up such responsibility.
25. The Respondent avers that the impending restructure initiated in March 2021 subsequent to a notice dated 16th February 2021 notifying the Ministry of Labour, Social Security and Services of the intended redundancy; as a result, the Claimant was called to officially receive her notice of intended redundancy as is the norm and under the labour laws and procedures.
26. However, the Claimant was displeased with the notice and immediately rejected the same and stormed out of the General Manager's office and proceeded to her office where she started clearing her desk and removing her personal items. Ultimately, she vacated the premises never to be seen again despite the Respondent communicating its displeasure in her conduct vide an email dated 30th March 2021. She was further requested to return to work for a proper handover of tasks assigned to her but she refused to date.
27. The Respondent avers that the service of the notice of redundancy upon the Claimant was done properly in accordance with the law and the Claimant cleared her desk and on her own volition vacated the Respondent's premises in protest upon being served the redundancy notice. She collected her



personal belongings before leaving and anything left behind was forwarded to her on 20th March and none of her items is in the Respondent's possession.

28. The Respondent avers that the purpose of the Claimant's understudy as is its norm was to acquire training and obtain skills to help them in their career growth. Further, the Claimant was not the only understudy to Mr. Thomas Matthews as alleged as he was in charge of over three understudies for each of the work permit durations.
29. The Respondent avers that even her fellow employees were surprised at her actions when she parked her things and stormed out of its premises in protest, when the Respondent's management had taken great strides to ensure the working relations were as comfortable and conducive to allow its employees address issues without feeling oppressed.
30. It is the Respondent's case that the procedure for restructuring and redundancy as per Section 40(1) of the Employment Act was duly complied with and the Labour Office was sufficiently notified of the same.
31. The Respondent avers that at the time of declaring the Claimant's position redundant, she had utilised most of her accrued leave days leaving four leave days only. Therefore, the allegation of unpaid leave days is unjustifiable.
32. The Respondent avers that on 19th March 2021, upon computation of her final dues, the Claimant was paid her terminal dues of Kshs. 384,012 which included: basic salary and house allowance for the month of March 2021; one month's salary in lieu of notice of termination; four accrued leave days; severance pay for two completed years at Happy Easters Kenya Limited; and severance pay for five completed years at Flame Tree Africa Limited. And she was also issued with a Certificate of Service as required by law.

Evidence in Court

33. The Claimant (CW1) adopted her witness statement dated 22nd July 2021 as her evidence in chief and produced her filed documents dated 22nd July 2021 as her exhibits.
34. During cross-examination, CW1 testified that she was appointed Acting Finance Manager by the Human Resource Manager in the presence of the Group Chief Finance Officer and Chief Executive Officer in March 2020. During this period, the terms and conditions of her contract remained the same.
35. CW1 testified that the termination was on account of redundancy and she was issued a notice of intended redundancy one month prior but she did not sign it.
36. CW1 testified that she was aware she could only carry forward five leave days to the following year.
37. CW1 testified that she was never reprimanded about her work which involved managing the company Till and Mpesa numbers.
38. CW1 testified that she was paid final dues of Kshs 314,884 and severance pay of Kshs. 69,129 and she was issued with a certificate of service.
39. The Respondent's witness Beatriz Mejide (DW1) testified that she is the Respondent's Group Chief Finance Officer and adopted her witness statement dated 14th May 2024 as her evidence in chief.
40. During cross-examination, DW1 testified that she appraised all accounting staff and the Claimant was appraised in 2019 at C- developing. The Claimant's performance was poor.
41. DW1 testified that she has no documents showing the Respondent undertook a restructuring.



42. DW1 testified that one of the positions in the Accounts Department was declared redundant; there were four Accounts Assistants and the Claimant was declared redundant due to per poor performance.
43. The Respondent's second witness, John Ongochi (DW2) testified he works for the Respondent as a Security Officer. He adopted his witness statement dated 28th June 2022 as his evidence in chief.
44. DW2 testified that it is not true that the Claimant was chased out of the Respondent's premises as he was on duty on 18th March 2021.
45. The Respondent's third witness, Henry Muthoka (DW3) testified that he works for the Respondent as a Messenger. He adopted his witness statement as his evidence in chief.
46. DW3 testified that the Claimant left a water bottle and A4 sized mirror at the Respondent's office. The Claimant subsequently called him and asked him to take the items to her.
47. DW3 testified that he delivered the items to Nancy's home in Embakasi. He used to deliver documents with a delivery note but since Nancy was a friend, he did not go with one.
48. The Respondent's fourth witness, Hegne Krishna (DW4) adopted his witness statement dated 8th June 2022 as his evidence in chief.
49. Upon cross-examination, he testified that the Claimant never worked as a Finance Manager; the duties of the Finance Manager was distributed across board in the absence of the Finance Manager.
50. DW4 testified that the Respondent had 180 staff members and 20 were affected by the redundancy.
51. The Respondent's fifth witness, Dee-vona Quadros testified that she is the Respondent's Group Human Resource Manager. She adopted her witness statement dated 20th January 2022 and supplementary witness statement dated 20th June 2022 as her evidence in chief.

Claimant's Submissions

52. The Claimant submitted on three issues: whether the termination of the Claimant by the Respondent on account of redundancy is lawful and fair; whether the Claimant is entitled to acting allowance; and whether the Claimant is entitled to return of her personal effects and other reliefs sought.
53. On the first issue, the Claimant submitted that the *Employment Act* permits an employer to terminate an employee on account of redundancy. However, it is mandatory requirement that for redundancy to be lawful it must be both substantially justified and procedurally fair.
54. The Claimant submitted that the DW1's assertion that she was singled out among three other accounts assistants as she was not well versed in basic accounting concepts is false as the Claimant had worked for the company for more than seven years and performed exceedingly well as evidenced in her increased salary and performance appraisal review in the year 2019 which rated her A- highly commendable.
55. The Claimant submitted that Section 40 of the *Employment Act* places conditions to be met before declaring an employee redundant and thus terminating them. Further, for termination by way of redundancy to be fair, the same should be in compliance with section 45(2)(b)(ii) of the *Employment Act* which require an employer to prove that the reason for the termination is valid, fair and based on its operational requirements. She relied on the authority of *Julie Tupiran Njeru v. Kenya Tourist Board Industrial Cause number 886 of 2010* where Rika, J. observed as follows: -



- a. Termination of employment through redundancy being an involuntarily termination must be procedurally fair and substantively justifiable and must follow the law on unfair termination in particular under section 43 and 45 of the *Employment Act*, 2007.
 - b. Fairness of the redundancy process includes engagement of the employee by the employer in adequate consultations which should precede any decision on termination.
 - c. Fairness of the redundancy process further requires the employee to be informed on the selection criteria and must involve the participation of the claimant in evaluation and scoring system.
 - d. The principle of First In, Last Out (FILO) or Last In, First Out (LIFO) would have been another acceptable mode of determining who was to be selected for termination on account of redundancy.
 - e. There are four forms of Notification envisaged in the law of redundancy; the first one announces to the affected employee the intention to declare the redundancy, which notice meant to pave way for consultations. The second one is the normal termination notice.
 - f. Even in straightforward and genuine case of redundancy, the employer must ensure there is a valid reason in the process of selection of each individual position for redundancy.
56. It is the Claimant's submission that it was upon the Respondents to prove that her role was no longer existing within the organisational structure and that the same had been declared redundant. No evidence was produced in court to show that the Respondent's accounts department had been abolished in fact DW1 stated that the Claimant was the only Accounts Assistant declared redundant among the three in the Accounts department; this is an indication that the Claimant's role is still operation.
57. The notice of redundancy dated 18th March 2021, the Respondent cited it was undergoing a restructuring process in the accounts department as the reason for declaring her redundant. There was no evidence to show how the restructuring was done, how many employees would be impacted and what selection process was used. The Claimant was the only employee from the Accounts Department terminated by the Respondent. It is therefore the Claimant's submissions that there was no lawful or reasonable basis for the Respondent to declare the Claimant redundant.
58. The Claimant submitted that the principle of last in first out or first in last out was not, was not observed by the Respondent in terminating her services. DW4 testified there were six Accounts Assistants who were left after the Claimant's termination, amongst those retained, were junior to her.
59. It is the Claimant's submission that the Respondent's actions were in total disregard of Section 40 of the *Employment Act*; there was no notice to the Claimant of the intended redundancy, the reasons for and the extent of the intended redundancy of her department at least one month before the intended date of termination.
60. The Claimant submitted that the redundancy notice sent to the Labour office on 16th February 2021 was never copied to the Claimant; she was only given the notice of intended redundancy and a direct notice of termination both dated 18th March 2021; this was not sufficient notice. Further, there was no consultation between the Claimant and Respondent; she relied in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] KECA 404 (KLR) "the failure to issue a redundancy notice to the Labour Officer and a separate notice to the affected employees amounted to procedural unfairness."



61. The Claimant submitted that contrary to Sections 41, 43 and 45 of the Employment Act, she was not invited for a hearing or to make any presentations that she may have wished to present during the encounter of 18th March 2021 with the General Manager. The Claimant was simply informed of the decision to terminate her on redundancy and handed a termination notice with no notice as required by the law. Reliance was placed in *Daniel Mburu Muriu v Hygrotech East Africa Ltd* [2021] KEELRC 316 (KLR) the court held: “Clearly, declaration of redundancy is a process and not an event. Further, even when an employee is to be terminated on redundancy such an employee should still be afforded a hearing on whatever it is that they would wish to say about the termination on redundancy.”
62. It is the Claimant’s submissions that she was denied due process as enshrined under Article 47 of the Constitution, Section 4 of the Fair Administrative Actions Act and Section 45 of the Employment Act. Therefore, the Claimant’s termination on account of redundancy was unlawful and unfair.
63. On the second issue, the Claimant testified that she attended a meeting by the Respondent’s Chief Finance Officer, Human Resource Manager and General Manager asking her to act as Finance Manager since Matthews had left, however, this was not put in writing by the Respondent. It is the Claimant’s submissions that it was not his duty to set out the terms of her acting capacity in writing.
64. The Claimant submitted that Section 9(2) of the Employment Act provides for executing of employment contracts as follows: “An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3)”
- This was affirmed in *Kimoja v Rai Plywoods (K) Limited* [2024] KEELRC 405 (KLR) as follows: “The Respondent having been the one responsible for drawing up the contract and ensuring that it is signed by the Claimant, it cannot hide behind the lack of the contract. Section 10(6) as read with 10(7) of the Employment Act shifts the burden of proof in employment disputes to the employer.”
65. The Claimant further relied in *Richard Abiero v Nyalı Golf and Country Club Limited* [2020] KEELRC 522 (KLR) in which the court stated: “Acting appointment is a form of variation of contract. It is not vitiated only by the fact that it is not given in writing. The law recognizes oral, as well as written contracts of employment. There is no reason why an oral variation cannot be upheld by a Court of law.” The Claimant submitted that she was acting as Finance Manager for the period between March 2020 to 31st March 2021 when the Respondent did not have a substantive Finance Manager and should be compensated for the time and skills spent in performing these duties.
66. On the final issue, the Claimant submitted that the maximum award of 12 months gross salary would be adequate compensation on grounds that the Respondent terminated her employment on account of redundancy in a grossly unfair manner and by denying her both substantive and procedural fairness.
67. The Claimant submitted that she is entitled to general damages resulting from the Respondent’s breach of her right to fair labour practices protected under Article 41 of the Constitution and gross mistreatment. The breach manifested by the Respondent recruiting a foreigner, Mr Santosh to take up the duties she was performing despite being qualified and capable to perform them; secondly, she was chased away from the offices without an opportunity to take her belongings and directed to pick her final dues cheque at Nextgen Mall and not the Respondent’s premises.
68. The Claimant submitted that she is entitled to payment of accrued leave days as at the of her termination, she had accrued 36 leave days.



Respondent's Submissions

69. The Respondent submitted on three issues: whether the Respondent complied with the applicable legal provisions in terminating the Claimant's employment on account of redundancy; whether the termination of the Claimant's employment was unfair in the circumstances; and whether the Claimant is entitled to the reliefs and dues claimed in the Statement of Claim.
70. On the first issue, the Respondent submitted that it is a well-established principle of law that redundancy prima facie constitutes a fair ground for termination of employment provided the employer can demonstrate that genuine redundancy was the reason for dismissal.
71. The Respondent submitted that redundancy does not require multiple employees to be affected for it to be valid. What matters is the employer's operational need not the number of roles impacted; a single position may lawfully be declared redundant if it is no longer necessary for the efficient running of the business.
72. The Respondent submitted that for redundancy to be fair and lawful, both substantive and procedural requirements under the Employment Act must be met. The Respondent has demonstrated that the decision to declare redundancy arose from genuine operational and financial challenges as confirmed by the testimonies DW1 and DW4. This rationale was not only legitimate but it was also communicated to the Claimant and the Labour Office, satisfying substantive fairness.
73. The Respondent submitted that it is settled law that the court's role is not to evaluate the commercial soundness of a redundancy decision, but simply to determine whether the redundancy was genuine, the employer acted reasonably and the process followed was procedurally fair.
74. It is the Respondent's submission that the Claimant's termination was not personal or targeted as alleged. The Respondent openly communicated its financial difficulties to all staff and took reasonable steps to streamline operations to improve efficiency and cut costs. The Claimant's position within the Accounts Department was identified as redundant following objective assessment.
75. The Respondent submitted that it fully complied with Section 40 of the Employment Act which prescribes specific steps that an employer must adhere when undertaking redundancy.
76. The Respondent submitted that it notified both the Labour Office and the Claimant in writing of the intended redundancy and the reasons therefor.
77. It is the Respondent's submissions that there is no legal requirement that notice to the employee and Labour Office must be issued simultaneously. The only statutory obligation under Section 40(1) of the Employment Act is that both notices must be given at least one month prior to the intended date of termination on account of redundancy. The Claimant initially refused to accept the redundancy notification and stormed out of the office and by a letter dated 18th March 2021, she was invited to a one month consultation period and additionally vide an email dated 25th March 2021, she was invited to continue working during the consultation period.
78. The Respondent submitted that the Claimant chose to abscond work and failed to engage in the consultation period. Therefore, it would be unjust to penalise an employer where the employee through her own conduct frustrates the consultation process. A party cannot benefit from their wrongful acts. Save for the Claimant's frustration of the consultation process, the Respondent duly discharged its legal obligations and made itself available and open to meaningful consultations.
79. On selection criteria, the Respondent submitted that in law, employers are required to apply fair and objective criteria considering both seniority and ability, however, seniority alone should not be the



- controlling factor. The Respondent demonstrated that it duly considered seniority in time, alongside the skill, ability and reliability of each employee within the class affected by the redundancy.
80. The Respondent relied in Murgor JA's holding when addressing the applicable criteria for selecting employees for redundancy in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* (supra) as follows: "I do not agree with the Industrial Court that LIFO is the sole mandatory criteria to be applied in redundancies. It is evident that section 40 (1) (c) requires the employers to apply all the selection criteria specified, with due regard to seniority in time, skill, ability and reliability of each employee. A sole application of LIFO would no doubt, be detrimental to any employer, as continuity and succession planning within the organization could be jeopardized."
 81. The Respondent submitted that it applied statutory criteria; the Claimant 's overwhelming deficiencies in skill, ability and reliability when objectively assessed alongside her colleagues which were outlined by DW1 in her testimony; and these assertions were uncontroverted by the Claimant. The Claimant consistently failed to reconcile MPESA and Till amounts accurately occasioning significant financial losses to the company.
 82. The Respondent submitted that the Claimant's conduct following the theft of petty cash from her desk further demonstrated her unreliability. She took inordinately long time to cooperate with the Respondent's insurers and the police in investigating the theft despite receiving repeated reminders from the Insurer.
 83. The Respondent submitted that internal evaluations, undertaken alongside her colleagues revealed that the Claimant lacked basic accounting knowledge despite being afforded understudy opportunities with expatriate colleagues.
 84. Based on the above, the Respondent submitted that the Claimant was not unfairly singled out as when she was subjected to a fair assessment against her peers; the Respondent could not ignore these material considerations on skill, ability and reliability.
 85. On payment of statutory dues, the Respondent submitted that it fully discharged its obligations to the Claimant. It is important to note that upon the Claimant's transfer from Happy Eaters to Flame Tree Group in February 2016, the Claimant was paid all her full and final dues, consequently, she has no further claim against the Respondent for the period between July 2013 and February 2016.
 86. The Respondent submitted that the Claimant was paid severance pay for her service calculated for two years at Happy Eaters and five years at Flame Tree Group; one month's salary in lieu of notice; and payment for her accrued leave days which were four days. There is no dispute that the Claimant received this payment as she admitted in her testimony having received the monies without any protest.
 87. The Respondent submitted that Clause 11 of the Claimant's employment contract incorporated the Respondent's standing orders which required all employees to utilise their annual leave days within the year they accrued with a maximum of five leave days permitted to be carried forward into the following year.
 88. On the second issue, the Respondent submitted that the termination of the Claimant's employment was lawful, fair and carried out in full compliance with the *Employment Act*. The decision was based on genuine redundancy necessitated by operational restructuring and prevailing economic circumstances.
 89. The Respondent submitted that the Claimant failed to prove she was unfairly terminated as provided under Section 47(5) of the *Employment Act*. The Respondent contends that her attempt to raise multi-disciplinary related claims is misguided as this matter concerns redundancy and the allegation she was denied hearing yet redundancy does not require hearing but consultation.



90. On the final issue, the Respondent submitted that having established the termination was substantively and procedurally fair, the prayer for compensation fails. Further, the Claimant is not entitled to any of the reliefs claimed as she received her leave pay and salary up to 17th April 2021 when she absconded duty.
91. The Respondent submitted that there is no evidence to suggest that the Claimant left behind any personal items other than those returned to her or that the items were worth the amount sought. The legal principle he who alleges must prove applies and the Claimant failed to discharge that burden.
92. The Respondent submitted that the Claimant's claim for acting allowance rests on the unsubstantiated assertion that she was verbally appointed as Finance Manager. However, she did not call any witnesses to support this assertion. DW4 clarifies during trial that the Respondent never made verbal appointments especially for such sensitive and senior positions.
93. The Respondent submitted that the courts will only find that an employee acted in a given capacity if there is evidence of an appointment or the employee performed the full scope of duties of that role with the employer's knowledge and approval; none of these conditions exists in this case. Therefore, it is unreasonable to conclude that the Claimant was appointed Acting Finance Manager or performed any of the position's duties. Accordingly, the claim for acting allowance has not proven and must fail.
94. The Respondent submitted that the Claimant's pleadings are vague as to the specific unfair labour practices alleged. A Claimant must demonstrate the employer's conduct that treated them differently from other employees of similar rank or which was denied, no such denial of rights had either been pleaded or proven in this case.
95. I have examined all the evidence and submissions of the parties herein. The claimant's contention is that she was unfairly terminated. She avers that on the morning of 18/3/21, she reported for work as usual just to be served with a redundancy notice on 18/3/2021. The same evening she was served with a termination notice. The letter of intended redundancy is actually dated 18/3/21 and was giving her one month's notice. The notice of termination was also dated the same day 18/3/21.
96. The letter informed her that she was being given 1 months termination notice on redundancy. The letter also informed her that the notice will expire on 18/4/21 and she was to be paid accrued leave and severance pay. The letter on one hand informed her that she was to continue discharging her duties with diligence during the notice period but also stated that she was to hand over all property belonging to the company by close of business of the same day.
97. The respondents do not deny this chronology of events. Section 40 of the [Employment Act](#) states as follows:
1. An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –
 - a. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
 - b. where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer ;



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

98. The law is clear on what an employer intending to declare an employee redundant needs to do. The notice intended is one month. It is however apparent that there was no real notice in case of the claimant as she was given the notice the same day and asked to hand over all company properties. The respondent indicated that she was to continue to discharge all her duties during the notice period. Their contents however betray them and show that they did not intend to keep her beyond 18/3/21.

99. In *Kenya Airways Ltd vs Aviation and allied Workers union Kenya & 3 Others* (2014) KCA 404 (KLR), the Court of Appeal laid down the process an employer needs to follow before effecting a redundancy. The process involves a window to allow for consultations and also give the notice to the labour officer.

100. With the respondents asking the claimant to hand over all properties of the respondents on the day of notice, that did not give room for consultation. In *Kenya Airways and Aviation & Allied Workers Union* case the court held that the notice period gives room for consultation and an opportunity to an employee to prepare for a softer landing space. These were denied to the claimant and the opportunity to help to consult and find out any other space the claimant would be able to secure.

101. Because of the lapse in procedural fairness, it is my finding that the redundancy was unfair and unjustified. Section 45(2) of the [Employment Act](#) 2007, states as follows:

- (2) A termination of employment by an employer is unfair if the employer fails to prove——
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason——
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.

102. In the case of the claimants, there being no due process, I find for her and award her as follows:

- (1) given the unfairness of being bundled out of office without any proper notice period and denying her an opportunity to consult for a soft landing, I find 8 months' salary as compensation for unfair redundancy is appropriate = 8 x 113,566=Kshs 908,528/-.



- (2) I also award the claimant her 23 days leave outstanding as at 16/3/23= $23/30 \times 113,566 =$ Kshs 87,067/-.
- Total = Kshs 995,595 less statutory deductions.
- (3) I also direct the respondent to return her personal effects and items as pleaded.
- (4) The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

