



REPUBLIC OF KENYA



**Shihemi v Sendwave Limited (Cause E658 of 2023)  
[2025] KEELRC 1818 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1818 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E658 OF 2023  
CN BAARI, J  
JUNE 12, 2025**

**BETWEEN**

**PRENIER SHANYISA SHIHEMI ..... CLAIMANT**

**AND**

**SENDWAVE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. For determination is the Claimant's Statement of Claim dated 10<sup>th</sup> August, 2023 and filed on 17<sup>th</sup> August, 2023. Under the claim, the Claimant seeks the following reliefs as against the Respondent:-
  - a. A declaration that the Claimant's termination was unfair and unlawful;
  - b. A sum of Kshs.7,236,656.40 being twelve (12) months' salary for unfair and unlawful termination;
  - c. Compensation for violation of her rights to fair labour practices under Article 41 of *the Constitution*;
  - d. Interest on (b) and (c) above from the date of termination;
  - e. Costs of this claim; and
  - f. Any such other appropriate relief as the Court may deem fit.
2. The Respondent filed a Response to the Statement of Claim dated 22<sup>nd</sup> January, 2024 denying the Claimant's averments. The Claimant subsequently filed a Reply to the Response to the Statement of Claim dated 20<sup>th</sup> February, 2024 restating her case.
3. The Claimant's case was heard on 26<sup>th</sup> February, 2025, where the Claimant Ms. Prenier Shanyisa (CW1), testified in support of her case. She adopted her witness statement and produced her list and



bundle of documents dated 10<sup>th</sup> August, 2023 and her supplementary list of documents dated 20<sup>th</sup> February, 2024 as exhibits in the matter.

4. The Respondent case was heard on even date with the Respondent's witness Mr. Steve Carpenter (RW1), its director of People Business Partners and Talent Acquisition, testified on behalf of the Respondent, adopted his witness statement and produced his list and bundle of documents dated 23<sup>rd</sup> January, 2024 in support of the Respondent's case.
5. Submissions were filed for both parties.

#### **The Claimant's case**

6. It is the Claimant's case that she was employed by the Respondent vide a letter of offer dated 31<sup>st</sup> December, 2021, and which she signed on 3<sup>rd</sup> January, 2022 as a HR Generalist with a single reporting line to the Company's Head of People's Operations.
7. The Claimant avers that she earned an initial salary of Kshs.6,767,100 per annum which rose to Kshs.7,236,656.40 per annum. She states that her salary was varied, but not her job description and title which remained as a HR Generalist until termination.
8. It is the Claimant assertion that when she was due for promotion from level 2 to level 3 which promotion was subsequent to her performance review in January, 2023, the Respondent terminated her employment unlawfully and unfairly in April, 2023.
9. It is her case that by a letter dated 8<sup>th</sup> March, 2023, to the Ministry of Labour and Social Protection and copied to the Claimant, the Respondent declared two positions redundant namely; People Business Partner and Quality Assurance analyst.
10. The Claimant states that at the time of the restructuring/redundancy plan, she was still employed as a HR Generalist and therefore her position pursuant to the notice was not among those to be declared redundant. She further states that she was nevertheless declared redundant contrary to Section 2 of the [Employment Act, 2007](#).
11. It is her case that despite the declaration of redundancy for the two above positions, the Respondent employed new members of staff namely Steve Carpenter and Dave Burns in March, 2022 and November, 2022.
12. It is the Claimant's position that her termination under the guise of redundancy was not genuine as the roles and functions of the redundant positions continued as before.
13. It is contended that the Respondent failed to give the Claimant an opportunity for a thirty (30) day consultation prior to terminating her employment on account of redundancy contrary to Article 47 of [the Constitution](#) and Article 13 of Recommendation No. 166 of the ILO convention No. 158-Termination of the Employment Convention, 1982.
14. It is the Claimant's assertion that her termination on account of redundancy was unfair, unlawful and in breach of her rights to fair labour practice as guaranteed under Article 41 of [the Constitution](#) of Kenya. She states that the Respondent violated her right to work and protection against unemployment under Article 23(1) of the Universal Declaration of Human rights.
15. On cross-examination, the Claimant confirmed that she received a redundancy notice and was paid her redundancy dues in the amount of Kshs.861,789.00 on 26<sup>th</sup> April, 2023.



16. On re-examination, the Claimant stated that she did not participate in a performance review prior to the redundancy, and was not informed of the redundancy procedure.
17. The Claimant prays that her claim be allowed.

### **The Respondent's case**

18. The Respondent's case is that the Claimant was indeed its employee. It states that owing to the acquisition of the Respondent by World Remit Service Company limited in 2021, the Respondent underwent an integration process in 2022, but the Claimant's job description remained the same under the title People Business Partner.
19. The Respondent avers that it declared the Claimant's position as the People Business Partner redundant, and thereby served the Claimant a notification of redundancy letter dated 8<sup>th</sup> March, 2023. The Respondent further states that it considered the applicable criteria against the particular class of employees at risk of redundancy, and scored the Claimant against objective criteria prior to declaring her position redundant.
20. It is the Respondent's case that the Claimant was lawfully declared redundant and was duly consulted on the redundancy process.
21. On cross-examination, RW1 told Court that the Claimant was employed as a HR generalist and there was no evidence to indicate that the Claimant's role and job description was varied from HR Generalist to the People Business Partner's position.
22. It was RW1's testimony that in the Claimant's payslips, her job title remained as a HR Generalist from employment up to termination.
23. RW1 further confirmed that the Claimant's position as a HR Generalist was not among those listed by the Claimant to be declared redundant as per the notification of redundancy letter dated 8<sup>th</sup> March, 2023. He further confirmed that there was no evidence of consultation prior to the redundancy.
24. It was RW1's evidence that two people still hold the position of People Business Partner, despite the declaration of redundancy, one of whom is RW1.
25. On re-examination, RW1 indicated that the position of People Business Partner was not abolished, but the number of staff were reduced from 5 to 3. He further clarified that the letter dated 8<sup>th</sup> March, 2023 was a notification of intent and not a final notice, and that a final notice was issued on 8<sup>th</sup> April, 2023, giving the Claimant a thirty (30) days consultation period.

### **The Claimant's Submissions**

26. The Claimant relied on the Court of Appeal decision in Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR to submit that termination of employment on account of redundancy ought to be both substantially justified and procedurally fair.
27. It is the Claimant's submission that the reasons advanced for the redundancy in the notice letter dated 8<sup>th</sup> March, 2023 did not prove that the Respondent's growth through automation and software rather than headcount necessitated termination of the impacted staff on account of redundancy.
28. It is her submission that the roles that were declared redundant were not abolished. She had reliance in the case of Nasumaye Vs DHL Excel Supply Chain (K) Ltd[2023] KEELRC 3152 (KLR), for the holding that redundancy ought to apply to a specific role rather than an individual employee.



29. The Claimant submits that the Respondent did not comply with Section 40 (1)(c) of the *Employment Act* on procedural requirements to be followed in the event of a declaration of redundancy. It is her submission that the selection forms were not used to identify employees for redundancy, but rather to determine who would be considered for the role of People Business Partner.
30. The Claimant submits further that the termination process on account of redundancy was procedurally flawed and in breach of her statutory rights.
31. It is the Claimant's submission that the Respondent's failure to adhere to the statutory and procedural requirements for redundancy including failure to produce evidence that provided a reason for termination on account of redundancy, the lack of a proper notice, failure to consult and the absence of objective selection criteria constituted a clear violation of the Claimant's rights under *the Constitution* and the *Employment Act*, 2007.
32. The Claimant submits that she is entitled to compensation pursuant to Section 49 of the *Employment Act* for the violation of her employment rights. She sought to rely in the case of *Dickson Muteti Makau vs AAR Healthcare Kenya Limited* [2020] eKLR to support this position.
33. It is the Claimant's submission that she faced discrimination in employment when she was unlawfully terminated, yet her position as a HR Generalist was never declared redundant. The Claimant notes that the roles that had been declared redundant such as the People Business Partner remained occupied by individuals who were even employed after her.
34. It is the Claimant's submission that her termination was against her right to fair labour practice as guaranteed in Article 41 of *the Constitution* of Kenya, 2010.
35. The Claimant finally urges the Court to grant the orders sought in her Statement of Claim.

### **The Respondent's Submissions**

36. The Respondent submits that it had a valid reason to declare redundancies. It submits further that the redundancy was as a result of an integration that took place between Sendwave and World Remit in 2022 to form Zepz, which resulted in a rigorous restructuring exercise occasioned by the merger.
37. The Respondent submits that the Claimant was privy to the changes in the Respondent's organization and fully participated and identified herself as a People Business Partner.
38. It is the Respondent's submission that it considered and applied the objective criteria against each employee when selecting the position to be declared redundant from the class of employees holding the title People Business Partner. It submits that the Claimant and Kath Rainger were thereby selected as the two lowest scorers, and so were at risk of redundancy.
39. It is submitted that the Respondent complied with the selection criteria required under Section 40 (1) (c) of the *Employment Act* in that it gave due regard to seniority in time and to the skill, ability and reliability of each employee.
40. The Respondent submits that it exhibited selection forms in which the five employees were scored on the relevant criteria conducted on 23<sup>rd</sup> January 2023, where the Claimant scored the lowest and therefore stood the risk of redundancy. The Respondent relied on the holding of the Court of Appeal in *Kenya Airways Limited versus Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR to submit that the *Employment Act* does not necessitate an equal weighting of all factors (seniority, skill, and reliability) or a consideration of only one single ground, but rather a genuine and honest consideration of each criteria.



41. It is the Respondent's submission that it relied on the January 2023 performance reviews conducted prior to the redundancy decision in March 2023. It further submits that the decision to include the Claimant in the redundancy exercise was based on a legitimate consideration of her skills, ability, and reliability, as evidenced by the January performance reviews, and was not discriminatory.
42. The Respondent submits that it duly served a 30-day notice of its intention to declare redundancy dated 8<sup>th</sup> March, 2023 upon the Claimant, the Ministry of Labour and Social Protection as well as the County Labour Office, Nairobi. It submits further that the Claimant was terminated on 8<sup>th</sup> April 2023, a month after receipt of the first notice reiterating the fact that it duly complied with Section 40 (1) (a) and (b) of the *Employment Act*, 2007.
43. It is the Respondent's submission that the Claimant is not entitled to any compensation, maintaining that the Claimant's termination on account of redundancy was above board.
44. The Respondent further submits that the Claimant is also not entitled to any compensation since her right to fair labour practices as envisaged under Article 41 of *the Constitution* was not violated.
45. The Respondent urges that this Court dismisses the Claimant's claim with costs.

### **Analysis & Determination**

46. The following issues arise for determination:-
  - i. Whether the Claimant's termination on account of redundancy was fair.
  - ii. Whether she is entitled to the reliefs sought.

### **Whether the Claimant's termination on account of redundancy was fair and lawful**

47. Section 2 of the *Employment Act*, 2007 defines redundancy thus: -

“loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”
48. The general principle is that redundancy is a legitimate ground for terminating a contract of employment, provided that the employer can prove that actual redundancy was the reason for the dismissal.
49. Section 40(1) of the *Employment Act* spells out the minimum standards that an employer must adhere to when terminating an employee on account of redundancy as follows: -

“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.
50. The foregoing provisions are couched in mandatory terms and therefore, an employer considering redundancy has to fully abide by the requirements espoused under Section 40. It is not open to the employer to cherry pick and selectively apply any of the conditions. (See *Kenya Union of Journalists and Allied Workers v. Nation Media Group*, (2013) eKLR).
51. A perusal of the record shows that the Respondent served a notification of end of employment by reason of redundancy dated 8<sup>th</sup> March, 2023, which notification declared two positions of People Business Partner and QA Analyst redundant. On the face of the notice, is the receiving stamps of the Ministry of Labour and Social Protection and the labour office which then confirms that the notices were duly served. Further, the Claimant admitted that she was served with the notice and her only contention is that she was wrongly notified and declared redundant on the basis that she did not hold any of the aforementioned positions that were declared redundant.
52. The Claimant maintains that she was employed by the Respondent as a HR generalist vide a letter of offer dated 31<sup>st</sup> December, 2021, and that the said position was maintained without variance from the onset until her termination. She asserts that the only variation made in respect of her contract was on her salary that was adjusted to Kshs. 6,957,474.90 per year by a letter dated 6<sup>th</sup> March, 2022 and later adjusted to Kshs.7,236,656.40 per year by virtue of a letter dated 5<sup>th</sup> December, 2022.
53. The Claimant therefore, contends that she was unlawfully terminated as her position of HR Generalist was not among the ones that were declared redundant.
54. The Respondent contended that it went through an integration process in the year 2022, following which, the Claimant's job description, duties and responsibilities remained the same under the Title People Business Partner which position was declared redundant.
55. The Claimant's letter of offer dated 31<sup>st</sup> January, 2021 and her payslips for March and April, 2023, are clear that she was employed as a HR Generalist from 31<sup>st</sup> January, 2021, and which position she held until her termination. The Respondent did not lead any evidence to show that the Claimant's position changed to People Business partner or that any adjustment on her job position and description was made by the Respondent.
56. The Respondent's witness (RW1) told Court that the Claimant was employed as a HR generalist and her role and job description was not varied from HR Generalist to the People Business Partner's



position. He further confirmed that the only thing that changed in respect of the Claimant's contract was her salary. It was RW1's testimony that in the Claimant's payslips, her job title remained as a HR Generalist from employment up to termination.

57. By dint of foregoing, the position that the Respondent declared redundant was that of People Business Partner and not HR Generalist. It then follows that for the Respondent to terminate the Claimant when it is clear that her position was not amongst those declared redundant, no doubt rendered the termination unlawful and unfair and so I hold.
58. On whether the Respondent had substantive justification for the redundancy, the question is whether the Respondent has demonstrated the existence of a true or factual redundancy situation as to justify the declaration of redundancy. In Kenya Airways Limited vs. Aviation Workers Union Kenya case(supra) the Court of Appeal had this to say on substantive justification for a redundancy:-

“.....Redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and the termination is in accordance with a fair procedure. As section 43(2) provides, the test of what is a 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 true redundancy situation, such as reorganization, the employer must nevertheless show that the termination is attributable to the redundancy - that is that the services of the employee has been rendered superfluous or that redundancy has resulted in abolition of office. job or loss of employment- ”

59. The reasons that the Respondent advanced for the termination of the Claimant's employment under the notification read in part:

“As the impacted colleagues are aware, the Company (Sendwave, also known as Chime and Zepz) continually assesses our organization design and operations to make sure we're running an efficient 'Cost to serve.' As part of our 2023 strategy to Grow, launch and optimise, this assessment fits within our "Optimise" pillar supporting our sustainable growth. All functions have been reviewing sustainable opportunities for scaling our business whilst growing through automation and software rather than headcount.

This is to inform you that the two positions of People Business partner and QA Analyst are positions declared redundant, because we are looking to ensure we have people in the right locations to best serve our users and support our growth.”

60. In my view, the reasons advanced by the Respondent for declaring the positions vacant are ambiguous, vague and generalized and not well articulated or carefully explained so as to decipher why the Organization reached the decision to declare redundancies. There was no genuine attempt to explain or substantiate why the positions were declared redundant.
61. The Claimant has equally challenged the criteria adopted in declaring her redundant and further alleged that she was never consulted prior to the termination. The consultation process principally aims at adopting proper criteria for selection for redundancy and exploration of alternatives to redundancy.
62. Further, the Claimant's assertion that she was hired earlier than the two employees who were retained in the position was corroborated by RW1 who confirmed that he holds the position to date contrary to Section 40(1)(c) that demands that an employer has due regard for seniority in time.



63. It is also evident that the Respondent led no evidence to prove that it consulted the Claimant before terminating her contract on account of redundancy. In *Barclays Bank of Kenya Ltd & another V Gladys Muthoni & 20 others* (Supra) the Court of Appeal held;

“Furthermore, consultation was necessary before the redundancy notices were issued. Article 13 of Recommendation No. 166 of the ILO Convention No. 158 Termination of Employment Convention, 1982 provides: . . .

This law is applicable in this country. The purpose of the provision as Maraga JA emphasized . . .

The learned judge further emphasized that the consultation must be real and not cosmetic and citing with approval the New Zealand case of *Cammish V Parliamentary Service* (1996) 1 ERNZ 404 stating thus: . . .Murgor JA in the same case stated as much, adding . . . We respectfully agree with the views expressed by the two learned judges. *The Constitution* in Article 41 is fairly loud on the rights to fair labour practices and we think it accords with *the constitution* and international best practice that meaningful consultations be held pre-redundancy. We agree with the trial Court that redundancy notices are not mechanical so as to satisfy the motions of the law . . .”

64. It is the finding of the Court the Respondent has not placed sufficient material before the Court to show that there were consultations with the Claimant before the notice dated 8<sup>th</sup> March, 2023 was issued.
65. The totality of the foregoing is that the termination of the Claimant’s employment on the ground of redundancy miserably failed the minimum standard espoused under Section 40 of the Employment.
66. It then follows that the termination is unfair and unlawful and so I hold.

**Whether the Claimant is entitled to the remedies sought.**

67. A finding of an unfair termination of employment entitles the Claimant to compensation in accordance with Sections 49 and 50 of the *Employment Act*. (See *Benjamin Langwen v National Environment Management Authority* (2016] eKLR.)
68. In the case of *Alphonse Maghanga Mwachanya v Operation 680 Limited* [2013] eKLR the Court held that in determining an award of compensation the court is to consider the 13 factors set out under Section 49 (4) of the *Employment Act*. Further in the case of *Elizabeth Wakanyi Kibe v Telkom Kenya Ltd* [2014] eKLR the Court cited the case of *D.K. Marete v Teachers Service Commission Cause No. 379 of 2009* for the holding that remedies are not aimed at facilitating the unjust enrichment of aggrieved employees they are meant to redress economic injuries in a proportionate way.
69. Considering that the Claimant was in the service of the Respondent for about to two years, I deem an award of five months’ salary sufficient compensation for the unfair termination.
70. On the claim for an award of compensation for violation of her rights to fair labour practices under Article 41 of *the Constitution*, the Claimant neither laid a basis for the allegations nor led evidence in their prove. The claim is therefore unfounded and is dismissed.
71. In the final analysis, the Claimant’s claim succeeds and orders granted as follows: -
- a. A declaration that the termination of the Claimant’s employment on account of redundancy is unfair.



- b. An order that the Respondent pays the Claimant five months' salary as compensation for unfair termination at Kshs 3,015,273/-.
- c. The Respondent shall bear the costs of the suit and interest from the date of this judgment until payment in full.

72. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
12<sup>TH</sup> DAY OF JUNE, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Ms. Faheema present for the Claimant

Mr. Wesonga present for the Respondent

Ms. Esther S- C/A

