



Nyakwara v Housing Finance Company of Kenya Limited & another (Cause E953 of 2023) [2025] KEELRC 2167 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2167 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E953 OF 2023**

**L NDOLO, J
JULY 24, 2025**

BETWEEN

WILLIS KABORA NYAKWARA CLAIMANT

AND

HOUSING FINANCE COMPANY OF KENYA LIMITED 1ST RESPONDENT

**HOUSING FINANCE DEVELOPMENT AND INVESTMENT
LIMITED 2ND RESPONDENT**

JUDGMENT

1. The Claimant's employment was terminated by the Respondents on 23rd November 2020, on account of redundancy. This action by the Respondents is what caused the Claimant to come to court by way of a Statement of Claim dated 21st November 2023.
2. The Respondents filed a Statement of Response dated 15th April 2024, to which the Claimant responded on 24th April 2024.
3. The matter proceeded to trial where the Claimant testified on his own behalf. Eunice Wairimu Waweru testified on behalf of the Respondents. Thereafter, the parties filed written submissions.

The Claimant's Case.

4. The Claimant states that he was employed by the Respondents in the year 2017. He points out that whereas all his payments were made by the 1st Respondent, he was seconded to work for the 2nd Respondent. He worked for over three years until 23rd November 2020, when his employment was terminated on the ground of redundancy. At the time of separation, the Claimant earned a monthly salary of Kshs. 150,000.



5. By letter dated 23rd October 2020, the Claimant's employment was terminated on account of redundancy effective 23rd November 2020.
6. The Claimant accuses the Respondents of flouting the procedure on declaration of redundancy, thus rendering the termination of his employment unlawful and unfair.
7. The Claimant claims that the Respondents' actions were actuated by malice and ill motive, particulars being:
 - a. Unilaterally deciding to terminate the Claimant's services based on a false allegation of redundancy;
 - b. Failing to consider providing the alternatives available that would keep the Claimant in employment;
 - c. Failing to obtain approval from the Central Bank of Kenya prior to declaring the position redundant;
 - d. Hiring more staff yet at the same time declaring redundancy;
 - e. Failing to follow laid down procedure in terminating the Claimant's employment in a hurry to get rid of him;
 - f. Causing the Claimant mental anguish and unnecessary anxiety;
 - g. Failing to observe fair labour practices; and
 - h. Breaching the law relating to redundancy and fair procedure for termination of employment.
8. The Claimant asks for judgment against the Respondents in the following terms:
 - a. A declaration that the termination of his employment was unlawful;
 - b. A declaration that the Respondents' actions amounted to unfair labour practices;
 - c. General damages for unlawful and unfair termination;
 - d. Punitive damages for the aggravated nature of the unfair and malicious treatment, psychological and emotional suffering;
 - e. Certificate of service;
 - f. Costs plus interest.

The Respondents' Case.

9. In their Statement of Response dated 15th April 2024, the Respondents confirm that the Claimant was employed in the 2nd Respondent Company, on 1st November 2017, in the position of Property Manager, earning a gross monthly salary of Kshs. 150,000. The Claimant held this position until the termination of his employment on account of redundancy.
10. The 1st and 2nd Respondents aver that they are wholly owned subsidiaries of HF Group PLC. They add that sometime in 2020, there was intention to transfer the 2nd Respondent to the 1st Respondent, with a view to aligning the Respondents' operations with those of HF Group PLC.



11. It is pleaded that due to the restructuring, the 2nd Respondent opted to wind down its Project Finance Unit, where the Claimant was deployed. As a result, approximately, five (5) employees were expected to be declared redundant.
12. The Respondents aver that prior to declaring the Claimant's position redundant, they complied with the prevailing law on redundancy in the following manner:
 - a. The Respondents' officials held meetings, consulted and corresponded with the Claimant on account of the restructuring that would result to a declaration of redundancy;
 - b. Following the restructuring, the Respondents determined that not more than 5 employees from the Project and Property Management teams would be declared redundant and that the affected staff would be provided with more details when they became available;
 - c. On 23rd October 2020, the 2nd Respondent notified the Claimant in writing that his position had been impacted by the restructuring resulting in his role being declared redundant;
 - d. On 14th August 2020, the 2nd Respondent notified the County Labour Officer that due to the restructuring, it would render approximately 5 positions redundant;
 - e. The Respondents afforded the Claimant a one-month notice in writing;
 - f. The Respondents paid the Claimant severance pay calculated at thirty (30) days for each completed year of service, which is notably higher than that prescribed in law.
13. In addition to the above, the Claimant was availed the following benefits:
 - a. A twenty percent (20%) rebate on his existing staff loans;
 - b. A six (6) month grace period prior to loan conversion to commercial rates;
 - c. Medical cover up to 6 months, post exit as per his medical terms limit.
14. The Respondents maintain that the Claimant's terminal dues were computed and paid to him in full. In addition, the Claimant was issued with a certificate of service.
15. The Respondents deny the Claimants entire claim and ask the Court to dismiss it.

Findings and Determination.

16. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination.

17. The termination of the Claimant's employment was formalised by letter dated 23rd October 2020, stating as follows:

“Dear Willis,

RE: REDUNDANCY



I make reference to the discussion held with you on 23rd October 2020, with regards to the structure changes driven by our turnaround strategy. In the new structure, the HFDI structure has been absorbed into the bank operations, and therefore ceases to exist.

Consequently, your role having been impacted by these changes is declared redundant, and therefore your last day of work will be Monday, 23rd November 2020.

The company has worked out your terminal dues to be paid to you and includes the following:

Salary and applicable allowances up to and including 23rd November 2020
Severance pay at the rate of 30 days for every completed year of service. You have 3.1 years of service as at 23rd November 2020, hence your severance pay amounts to KES. 458,630/-
One (1) month's pay in lieu of notice amounting to KES. 150,000/-
Accrued leave not taken as at 23rd November 2020
Pension benefit in accordance with the trust deed rules and regulations.

In addition to this, you will be granted

- a. A 20% rebate on existing staff loans
- b. A six (6) months' waiver prior to loan conversion to commercial rates
- c. A Medical cover upto six (6) months' post exit as per your current limit

Less

Any amount owed to the business

The above amounts will be paid once you have completed the clearance process, signed off on all the necessary discharges and returned all Company property that may be in your possession. Payments will be made less any liability or any outstanding balance that may be indicated in the clearance form. Note that the amounts will be paid net of tax.

On behalf of management, we take this opportunity to thank you for your dedicated services over the last 3.1 years to the organisation and wish you the best in your future endeavours.

Yours faithfully,

(signed)

Tom Shivo

Human Resources Director”

18. There is no contest that the Claimant's employment was terminated on the ground of redundancy.
19. Section 2 of the [Employment Act](#) and the corresponding provision in the [Labour Relations Act](#), define redundancy as:

“ the 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.”
20. While our law recognises redundancy as a legitimate separation mode, it sets stringent conditions to be met by every employer considering redundancy. These conditions are codified in Section 40 of the [Employment Act](#) as follows:



40.

- (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 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 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.

21. The first 2 conditions under Section 40 require every employer declaring redundancy to issue a one-month notice of intention to the affected employee(s), their union (where applicable) and the local Labour Officer. By definition, this notice should set out the reasons for and the extent of the intended redundancy.
22. It is now settled that the redundancy notice contemplated by Section 40(1) (a) and (b) is separate and distinct from the termination notice required under Section 40(1)(f) (see *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR and *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR).
23. It is also settled that consultation with the parties to be affected by the intended redundancy, is a critical ingredient of the redundancy notice.
24. In the *Kenya Airways Case* (supra) Maraga JA (as he then was) stated the following:

“The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in...ILO Convention No. 158-Termination of Employment Convention, 1982, is to give the parties an opportunity to consider ‘measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations



on the workers concerned such as finding alternative employment.’ The consultations are therefore 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.”

25. The requirement for consultation was reiterated by the Court of Appeal in *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR) in the following terms:

“In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”

26. Further, Article 13 of ILO Convention No. 158-Termination of Employment Convention, 1982 provides as follows:

1. When the employer contemplates termination for reasons of an economic or technological, structural or similar nature, the employer shall
 - a. Provide the workers’ representatives concerned in good time with relevant information including the reasons for the termination contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
 - b. Give, in accordance with national law and practice, the workers’ representatives concerned, as early as possible an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

27. The Claimant complains that he was not issued with a redundancy notice. He testified that all he received was a termination letter which was handed to him in a meeting held on 23rd October 2020. The Claimant further testified that no redundancy notice was issued to the Labour Office, as required by law.

28. On their part, the Respondents maintain that redundancy notices were issued to the County Labour Office and to the Claimant. They go further to state that the Claimant was consulted on the ramifications of the redundancy and the available options.

29. The parties took sharply divergent positions on the issuance of notice to the Labour Office. While the Respondent produced a letter dated 14th August 2020, addressed to the Nairobi County Labour Office, the Claimant insisted that this letter was not received by the Labour Office, because there was no acknowledgment of receipt. On this issue, the Court took the evidence on record on face value, as it found no reason to doubt the testimony of the Respondents’ witness in this regard.

30. Regarding the notice to the Claimant however, the Respondents did not adduce any evidence to show service of a redundancy notice, much less consultation prior to the final decision to release the Claimant on account of redundancy.

31. Moreover, the selection criterion employed in the subject redundancy was not clear. In their written submissions dated 13th May 2025, the Respondents referred to the persuasive decision in *Williams v Compare Maxam Ltd* (1982) IRLR 63 where it was held that an employer declaring redundancy is



obligated to disclose the selection criterion applied and demonstrate that such criterion was reasonable and objective.

32. Apart from fronting restructuring affecting the Claimant's department as the genesis of termination of his employment, the Respondents did not disclose a clear criterion used to select the Claimant for redundancy.
33. As held by this Court in its decision in Fredrick Mulwa Mutiso v Kenya Commercial Bank Limited [2017] KEELRC 1664 (KLR) the procedural requirements set out in Section 40(1) of the Employment Act are aimed at guarding against unlawful and unfair termination of employment, clothed in redundancy language.
34. It follows therefore that if one step is missed, the entire redundancy process is tainted with irregularity and thus rendered unlawful. In this case, the Respondents missed the threshold for redundancy notice and selection criterion. The ensuing termination was therefore substantively and procedurally unfair.

Remedies.

35. In light of the foregoing, I award the Claimant six (6) months' salary in compensation. In arriving at this award, I have considered the Claimant's length of service and the Respondents' failure to observe due process in bringing the employment relationship to an end.
36. No case was made for punitive damages and this claim therefore fails and is disallowed.
37. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 900,000 being six (6) months' salary in compensation for unlawful and unfair termination of employment.
38. This amount will attract interest at court rates from the date of judgment until payment in full.
39. The Claimant will have the costs of the case.
40. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Onyancha for the Claimant

Ms. Obago h/b for Mr. Mbaluto for the Respondent

