



Universities Academic Staff Union (UASU) & another v Moi University & 2 others (Cause E018 & E020 of 2025 (Consolidated)) [2025] KEELRC 2121 (KLR) (11 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2121 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E018 & E020 OF 2025 (CONSOLIDATED)**

**MA ONYANGO, J
JULY 11, 2025**

**BETWEEN
UNIVERSITIES ACADEMIC STAFF UNION (UASU) CLAIMANT
AND
MOI UNIVERSITY RESPONDENT**

**AS CONSOLIDATED WITH
CAUSE E020 OF 2025**

**BETWEEN
KENYA UNIVERSITIES STAFF UNION (KUSU) CLAIMANT
AND
MOI UNIVERSITY 1ST RESPONDENT
THE COUNCIL, MOI UNIVERSITY 2ND RESPONDENT
THE VICE CHANCELLOR 3RD RESPONDENT**

JUDGMENT

1. The judgment herein is in respect of two suits filed by two trade unions representing staff of Moi University. Cause No. E018 of 2025 is filed by Universities Academic Staff Union (UASU), a duly registered trade union whose core mandate is to represent members of the University academic staff in all public universities of Kenya with the goal of improving the working conditions of the academic faculty and improving the quality of university education.



2. Cause E020 OF 2025 is filed by Kenya Universities Staff Union (KUSU) also a trade union registered under the *Labour Relations Act* to represent the non-teaching staff in the universities and to advocate for the rights and welfare of administrative, technical and support staff in the universities.
3. Moi University, the Respondent in Cause E018 of 2025 and the 1st Respondent in Cause E020 of 2025 is a public university duly registered under the *Universities Act*, No. 42 of 2012.
4. The 2nd Respondent in Cause E020 is established pursuant to the said Charter being the apex agent/body, responsible for human management including: setting terms and conditions of services for the staff of the University. Service of summons and any other necessary service upon them shall be effected through the Claimant's advocate's office.
5. The 3rd Respondent in cause E020 is on its part the office the chief executive officer of the 1st Respondent. Service of summons and any other necessary service upon them shall be effected through the Claimant's advocate's office.
6. The Claimants both have Collective Bargaining Agreements (CBA)s with the Inter-Public Universities' Councils Consultative Forum (IPUCCF) of the Federation of Kenya Employers (FKE) a Federation of all Public Universities duly registered as such. The CBAs which have been duly registered, secure the terms and conditions of service of university staff in all public universities in Kenya.
7. The Respondent Moi University is a member of the IPUCCF of the Federation of Kenya Employers (FKE) which has signed a recognition agreement with the Claimant unions for purposes of negotiation of the CBA.

Claimant's Case in Cause No. E018 of 2025

8. It is the Claimant's (UASU) averment that on 2nd April, 2025 the Respondent served it with a notice of the intention to declare some members of the Claimant redundant.
9. The Claimant avers that the notice dated 2nd April, 2025 had not been preceded by any formal or informal discussions between the Claimant and the Respondent before the issuance of the same and amounted to an ambush and breach of the Rules of Natural Justice as the Claimant was not given a chance to make any representation before issuance of the notice.
10. It is further the Claimant's averment that the Respondent had not, before issuance of the notice, formally informed the Claimant of any difficulties it was experiencing in sustaining the Claimant's members in employment.
11. The Claimant states that in order to enable it comprehend the significance and import of the letter dated 2nd April 2025, it wrote to the Respondent on 9th April 2025 seeking clarification which ought to have been supplied beforehand had the Claimant been involved in discussions prior to issuance of notice. That the clarification sought was to enable the Claimant to constructively engage the Respondent in the exercise.
12. According to the Claimant, the clarification the Claimant had sought from the Respondent and which the Respondent declined to provide was to be supplied with the following:
 - a. The detailed criteria used to identify the staff to be affected by taking into account their seniority in time, skill, ability and reliability as is required before proceeding with the intended Redundancy.



- b. The current staff establishment per department and the current staff in post per department to enable the Claimant ascertain whether the intended redundancy will violate the required staffing level.
 - c. The intended staff establishment per department and the staff in post per department after the Redundancy.
 - d. A detailed analysis on the current position vis-à-vis the position which may result after redundancy in respect to Lecturer: Student ratio.
13. The Claimant states that it was illegal, unjust and unfair for the Respondent to proceed with the intended redundancy which would violate various Laws and Guidelines issued by the Government and which are binding upon the University. The specific laws and Guidelines the Respondent is in breach of are as follows;-
- a. Section 40 of the [Employment Act](#)
 - b. Article 10 and 41 of the [Constitution](#) of Kenya
 - c. The Executive Office of the President - Guidelines on Management and Terms and Conditions of Service for Board Members and Staff of State Corporations, May 2024.
 - d. The Public Service Commission Guidelines for Development and Review of Human Resource Management instruments for State Corporations and Public Universities date 8th August 2023.
 - e. The Commission for University Education - Universities Standards and Guidelines, 2014
 - f. The Commission for Higher Education Standard and Guidelines for University Academic programmes.
 - g. Public Service Commission Guidelines on Establishment and Abolition of Public Office, in the Public Service, June 2025.
14. It was the Claimant's position that its objection to the declaration of redundancy was premised on the fact that there was no legal or financial justification availed to it for the redundancy in view of the Respondent's violation of the law and policy guidelines as set out above which according to the Claimant, if complied with, the Respondent would not require to carry out any redundancy.
15. The Claimant averred that as at the date of filing the claim it had not been informed by the Respondent about the criteria used to identify the staff to be affected by the redundancy as required by law which is a violation of section 40(1)(c) of the [Employment Act](#).
16. The Claimant requested the Respondent to list the staff in terms of the years they were employed, skills they have and ability so that a senior staff is not declared redundant and a newly employed staff retained or a more qualified staff declared redundant while a less qualified one was retained. That up to the date of filing suit the Respondent was yet to respond to the Claimant's letter.
17. The Claimant averred that the Respondent had further violated Clause 7.4 (ii) (b) of The Executive Office of the President Guidelines on Management and Terms and Conditions of Service for Board Members and Staff of State Corporations, May 2024 Sub-Heading Grading Structure & Establishment where the Respondent is required to maintain a staff ratio of 70.30 for Technical Staff-vs-the Administrative Staff.



18. It averred that currently this ratio was not being maintained by the Respondent as the administrative staff far much outweigh the technical staff. That had the Respondent complied with these express guidelines there would be no need to declare the Claimant's members redundant as they comprise the Technical Staff.
19. In addition to this the Claimant averred that The Public Service Commission Guidelines for Development and Review of Human Resource Management Instruments For State Development dated 8th August 2023 at Clause 4.3 Staff Corporations and Public Universities 4.3. (i) directed that the Respondent observes the ratio of 70:30 of establishment at technical staff to administrative support.
20. The Claimant averred that the Respondent was required by Law to first comply with these requirements before proceeding with the intended Redundancy if need be or at all.
21. The Claimant further averred that the Respondent was in breach of The Commission for University Education Universities Standards and Guidelines, 2014 where at pages 62-63 titled University Staff-PROG/STD/17-Guidelines No.5 demands that;

“ the recommended fulltime staff; student ratio are:-

 - a. Applied Sciences-1:10
 - b. Arts and Humanities-1:15
 - c. Medical and Allied Science-1:7
 - d. Pure and Natural Science-1:10
 - e. Social Science-1:18”
22. The Claimant averred that the Respondent's intended action will affect this ratio and it is yet to give the current staff/student ratio and what the ratio will be after the intended redundancy to enable the Claimant ascertain the need and basis of the intended redundancy.
23. The Claimant averred that the Respondent was further in violation of The Commission for Higher Education Standard and Guidelines for university Academic Programmes which provides as follows:
Clause 8 of these Standards at pages 19-20 Guidelines No. (g), (h) and (i) provides that: -
 - (g). Each institution shall determine the lecturer; student ratio based on their available academic resources. However, the maximum lecturer; student ration for each course shall be:
 - i. Theoretical based courses-1:50
 - ii. Practical-based courses-1:20
 - (h) An academic staff shall be assigned students to supervise on thesis/dissertation based on a combination of his/her teaching load, administrative duties, and supervision experience and capacity. The maximum number of students an academic staff shall supervise in any given academic year shall be:
 - i. Master-5
 - ii. Doctorate-3
 - i. The maximum lecturer workload shall be 40 hours per week and shall include teaching; marking of examination script; tutorials; preparation of examination papers; preparation



of teaching; supervision of academic work; administrative work; laboratory and laboratory preparation; and research/research assignments.

24. The Claimant further averred that the Respondent's intended action will affect this ratio to the detriment of the Claimant's members analysis is on the correct ratio is available and no projected ratio has been provided by the Respondent and the redundancy is now proceeding in a secretive and vicious manner.
25. It is further the averment of the Claimant that the Respondent is in breach of Article 41 of the Constitution which grants employees the right to fair labour practices.
26. The Claimant averred that the decision of the Respondent to initiate and proceed with the intended Redundancy without full disclosure to the Claimant violates the Provisions of Article 10 of the Constitution which requires public participation in decision making process by the persons likely to be affected by such decisions.
27. That an analysis of the above breaches by the Respondent leads to a conclusion that the intended redundancy is solely occasioned by the Respondent's failure to comply with the laws and guidelines.
28. The Claimant averred that on or around the 30th November 2024, the Claimant and the Respondent executed a Return to Work Formula which cured any financial difficulties the Respondent allegedly had by coming up with a Recovery Strategy, and which again the Respondent had declined, neglected and/or failed to implement. That failure to implement the Return to Work Formula negates the intended redundancy on financial grounds.
29. That the Respondent's actions are in violation of the Public Service Commission Guidelines on Establishment and Abolition of office in the Public Service as it is not anchored on transparency and accountability, not fair and will not facilitate efficiency and effectiveness in service delivery as the remaining teaching staff will not meet the student ratio as is required by the Education Standards.
30. That the actions of the Respondent further violates Section 40 of the Employment Act as the positions sought to be declared redundant are not being abolished and the office of the Lecturers being occupied by Claimants members will still exists as the Respondent has embarked on establishing other campuses for example in Baringo which will require additional staff and hence the reasons given for declaration of redundancy are not valid and factual.
31. The Claimant prays for the following orders against the Respondent
 - a. a Permanent Injunction restraining the Respondent either by itself, its agents, servants, and/ or anybody claiming under them from implementing the intended redundancy vide the letter dated 2nd April, 2025 or in any other manner howsoever.
 - b. A declaration that the intended redundancy vide the Respondent's letter dated 2nd April, 2025 is illegal and unlawful and a violation of the Claimant's rights to fair labour practice.
 - c. Costs of the suit.
 - d. Any other relief the Court may deem fit and just to grant in the circumstances.
32. Simultaneously with the Memorandum of Claim the Claimant filed an application by way of Notice of Motion in which it prayed for the following orders:
 - a. That the Application herein be certified as urgent and heard ex parte in the first instance.



- b. That a Temporary Order of Injunction be issued restraining the Respondent either by itself, its agents, servants, and/or anybody claiming under them from implementing the intended redundancy of the Claimants members vide the letter dated 2nd April, 2025 or in any other manner howsoever pending the hearing and determination of this Application.
 - c. That a Temporary Order of Injunction be issued restraining the Respondent either by itself, its agents, servants, and/or anybody claiming under them from implementing the intended redundancy of the Claimants members vide the letter dated 2nd April, 2025 or in any other manner howsoever pending the hearing and determination of this Claim.
 - d. That there be a Temporary stay on the implementation of the Respondent's letter dated 2nd April, 2025 on the intention to declare the Claimants members redundant pending the hearing and determination of this application and the claim herein.
 - e. That the costs of this Application be borne by the Respondents.
33. The Respondent filed a Response to the Memorandum of Claim dated 18th June, 2025. It avers therein that the Respondent initiated the redundancy process in 2022 when it notified the union and County Labour Officer vide letter dated 4th July, 2022 of its intention to carry out redundancies on grounds that it could not comfortably meet its financial obligations. That it later circulated an internal memo dated 5th July 2022 to the Claimant on the need for the redundancy. That the process was shelved as the Respondent was optimistic that the situation would improve following measures it had taken to avert the redundancy.
 34. The Respondent avers that unfortunately the financial situation did not improve necessitating the redundancies that are the subject of this suit. That it accordingly notified that Claimant of the intention to carry out redundancies by letter dated 2nd April, 2025.
 35. The Respondent stated that inadequacy of funds to properly administer the Institution calls for measures to legally manage its income vis a vis expenses.
 36. It states that redundancy is one of the legally recognized mechanisms to prudently assist the Respondent who is struggling to meet its contractual obligations as the employer.
 37. The Respondent further stated that the letter dated 2nd April 2025 which at the heart of it was an invitation to the Respondent to have a consultative forum to draw up the path that the legal process should take was responded to vide a letter Dated 9th April 2025 by the Claimant who sought certain information from the Respondent.
 38. That the Respondent via the letter dated 17th April 2025 promptly responded to the Applicant's letter and invited it to a consultative meeting on the 24th April 2025.
 39. That a joint consultative meeting was held between the Respondent and the Applicant where they were to discuss the way forward regarding the redundancy process but the same was never concluded.
 40. That the above string of correspondence is evidence enough that the process is in its initial stages and by the Applicant moving to Court is synonymous to them pre-empting a process that is yet to take shape.
 41. The Respondent denied the averments by the Claimant that the Respondent had declined to supply the documents sought by the Claimant upon being served with the redundancy notice. It stated that all the documents had duly been supplied as requested by the Claimant.



42. The Respondent stated that the Claimant, being a Union, needs to appreciate the process and this includes the internally provided mechanisms within an institution and unless the same is illegal and unfair which is not the case in the situation at hand, the Applicant needs to abide by the process and await the outcome as opposed to hijacking and stifling a rather legal process which has barely started.
43. It was the Respondent's position that Section 40 of the *Employment Act* substantially discusses the notice of redundancy which is not applicable in this case as the Respondent issued the notice of intention to declare redundancy.
44. It was further the Respondent's position that the letter dated 2nd April 2025 was not a Notice of Redundancy as Section 40 of the *Employment Act* clearly states that the same should state the criteria used, the employees affected and give a one (1) Month's timeline within which to send out letters of redundancy.
45. It was the Respondent's position that section 40 of the *Employment Act* does not provide for consultation as a prerequisite for initiating a redundancy but the university in the spirit of attempting to minimize the impact and consequences to the persons who will be affected chose to consult widely by engaging different stakeholders for exploring viable and less impactful alternatives to redundancy.
46. The Respondent averred that it was within its legally recognized mandate to hold consultative forums and invite ideas from the Claimant to discuss the way forward regarding the process and it is in the forums that the said information shall be shared.
47. The Respondent further averred that since it had not issued a notice of redundancy, it cannot be faulted for breaking any law and/or infringing on the rights of the members of the Applicant as emanated from the said notice.
48. The Respondent averred that this suit is misguided, bad in law, malicious and an abuse of the Court process as the same is meant to stifle a legally recognized process.

Case of KUSU

49. The Claimant (KUSU) avers that by letter dated 2nd April, 2025, the 3rd Respondent issued notice of intention to declare some of the staff of the 1st Respondent redundant.
50. The Claimant avers that it responded to the notice by its letter dated 17th April, 2025 wherein it requested that in order for the parties to have a constructive consultative meeting, the Claimant should be supplied with the following documents: -
 - a. Payroll summaries for June and December in the last four (4) years (2024, 2023, 2022, and 2021)
 - b. Current staff establishment per department, and current staff in post per grade per department and their retirement dated indicating whether they are technical or administrative and their date of employment. In addition, you should also include their current basic salary and house allowance.
 - c. Number of colleagues and directorates or campuses.
 - d. Ratio of technical staff to administrative staff
 - e. Number of staff on fixed term contracts and expiry dates
 - f. Number and remuneration of staff working in subsidiary companies of the university



- g. Number of students per academic year and the total number of students in the university
 - h. Capitation Grants
 - i. Appropriation-in-aid (AIA) for the years 2021,2022,2023 and 2024;
 - j. Number of courses (academic programs) being run and courses that have been scraped
 - k. Number of DVCs, Principals, Directors and their remunerations
 - l. Number of Deans and their total remuneration
 - m. Number of chairpersons of departments and their allowances.
51. The Claimant avers that in response to the 2nd Respondent's letter, it wrote a letter dated 17th April, 2025 wherein it requested that so as to have a constructive consultative meeting, it be supplied with the following documents: -
- a. Payroll summaries for June and December in the last four (4) years (2024,2023,2022, and 2021)
 - b. Current staff establishment per department, and current staff in post per grade per department and their retirement dated indicating whether they are technical or administrative and their date of employment. In addition, you should also include their current basic salary and house allowance.
 - c. Number of colleagues and directorates or campuses.
 - d. Ratio of technical staff to administrative staff
 - e. Number of staff on fixed term contracts and expiry dates
 - f. Number and remuneration of staff working in subsidiary companies of the university
 - g. Number of students per academic year and the total number of students in the university
 - h. Capitation Grants
 - i. Appropriation-in-aid (AIA) for the years 2021, 2022, 2023 and 2024;
 - j. Number of courses (academic programs) being run and courses that have been scraped
 - k. Number of DVCs, Principals, Directors and their remunerations
 - l. Number of Deans and their total remuneration
 - m. Number of chairpersons of departments and their allowances.
52. The Claimant avers that the 2nd Respondent thereafter sent it a letter dated 28th April, 2025 wherein it was informed that on the 24th of April, PKF Limited and KUSU National Officials would meet to discuss matter of staff right-sizing exercise at the university was considered.
53. The Claimant avers that the said letter invited them for a meeting with the university management board on 2nd May, 2025.
54. The Claimant avers that on 29th April, 2025, it sent a letter to the 2nd Respondent wherein it requested to be supplied with the documents listed in its letter dated 17th April, 2025 so as to adequately prepare for the meeting.



55. The Claimant avers that the Respondents in flagrant disregard of its request, failed to supply it with the documents sought and in addition, the Respondent did not provided the names of the employees who were to be declared redundant.
56. The Claimant avers that the Respondents' conduct violates the mandatory provisions of section 40 of the Employment Act and in particular sub section 1 (a) & (b) which provides that: -
- 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;
57. The Claimant avers that it is evident that the redundancy process being undertaken by the Respondents is unprocedural, illegal, null and void as it offends the mandatory guidelines enumerated by section 40 of the Employment Act and listed the particulars of illegality as follows:
- PARTICULARS OF THE RESPONDENTS' ILLEGALITY
- a. Failure to give sufficient reasons for the redundancy as required by section 40 of the Employment Act,2007;
 - b. Failure to give sufficient reasons for the redundancy as required by section 40 of the Employment Act,2007;
 - c. Failure to adduce documents in support of the decision to declare redundancy;
 - d. Failure to explain the extent of the redundancy to the Claimant;
 - e. Failure to give the names and positions of the employees to be affected by the redundancy;
 - f. Failure to supply the Claimant with the documents requested to enable it sufficiently represent its members;
 - g. Failure to notify the employees to be affected in writing as required by statute.
58. The Claimant avers that for redundancy to be lawful, it must be both substantially justified and procedurally fair.
59. The Claimant further avers that the 3rd Respondent's notice of intention to declare redundancy does not state the extent of the intended redundancy, the period of the said notice, number and names of employees to be affected, departments to be affected, selection criteria, basis of the payments to the employees affected and when the redundancies would take effect.
60. Simultaneously with the Statement of Claim the Claimant filed an application by way of Notice of Motion in which it sought the following orders:
- a. A declaration that the 3rd Respondent's notice of intention to declare redundancy in Moi University issued on 2nd April, 2025 is unprocedural, illegal, null and void.
 - b. An order in the nature of a permanent injunction restraining the Respondents whether by themselves, their agents, servants, employees and anybody whatsoever from carrying out and/or continuing with the unfair and unprocedural redundancy process pursuant to the illegal notice dated 2nd April, 2025.



- c. Costs and Interest of the cause.
- d. Any other order that this Honorable Court deems fit to grant

Hearing

- 61. The parties attended court severally for directions and were given several opportunities to hold consultative meetings with the hope that amicable settlement would be achieved but no settlement was reached.
- 62. It is important to mention that the court was from the beginning reluctant to issue orders restraining the Respondent from carrying out redundancies. On 14th May, 2025 when the Claimants sought temporary orders restraining the Respondent from issuing redundancy letters to their members before consultations were concluded, Ms. Akech who was holding brief for Mr. Kigen assured the court that there was no intention by the Respondent to issue redundancy letters while consultations were ongoing. On this basis the court directed the parties to continue with the consultations and report back to the court on 28th May, 2025. The very same day after the court session the Respondent issued letters of redundancy dated 13th May, 2025 to members of the Claimants.
- 63. Because of this bad faith by the Respondent the court suspended the redundancy letters when the Claimants applied for the said orders by applications dated 15th May, 2025, observing that the Respondent was acting in bad faith after misleading parties in court the previous day.
- 64. The parties were heard on 24th June, 2025 by way of oral submissions. Mr. Koceyo appeared for the Claimant UASU, Mr. Karanja for Claimant KUSU while Mr. Kigen appeared for the Respondents.
- 65. Mr. Koceyo relied on the memorandum of Claim dated 28th April, 2025, the witness statement of Dr. Constantine Wesonga, National Secretary General of the Claimant, the application filed by the Claimant together with the Claimant's and the application dated 14th May, 2025, the further affidavits of Dr. Wesonga dated 28th May, 2025 and 16th June, 2025.
- 66. He submitted that the Claimant came to court following the failure of the Respondent to reply to the Claimant's letter dated 9th April, 2025 requesting for particulars. That the Claimant wanted to know the establishment as redundancies will affect workload of lecturers. Further, that there are several guidelines on student ratios as reflected in documents at pages 18 to 149 of the Claimant's bundle of documents.
- 67. Mr. Koceyo submitted that the letters of redundancy were issued before documents requested were availed to the Claimant and before consultations were held. He submitted that consultations have to be real and not cosmetic as was held in the case of Kenya Airways v Aviation Union. He further submitted that the union must be given a reasonable time within which to respond.
- 68. He submitted that a redundancy that does not comply with the law is unfair termination as was stated in the case of Hesborne Ngaruiya Waigi v Equatorial Bank.
- 69. He submitted that at minute 11.5 of the meeting held on 12th June, 2025 the Respondent told the meeting that it was submitting a revised list of employees to be declared redundant to the Council after which the list would be submitted to the Union. That this should have been done earlier. That the union was kept in the dark.
- 70. Mr. Koceyo further submitted that the reasons given for the redundancy are not valid. That the Respondent's averment that student population has reduced from 50,000 to 20,000 was not proved.



- That in a meeting held on 27th May, 2025 the Respondent informed the meeting that it was increasing 1st year intake from 8000 to 13,174.
71. That on the issue of finances the Respondent produced Auditor's Report at page 124 of its bundle. That at page 177 it is stated that the information given by the Respondent is not reliable. Mr. Koceyo submitted that the report cannot be relied upon as the Respondent did not give the Auditor correct information.
 72. Mr. Koceyo further submitted section 2 of the Employment Act defines redundancy to mean abolition of office. He submitted that no office has been abolished so there is no redundancy. He submitted that the staff establishment at page 92 of the Respondent's bundle listed all courses and schools, none of which has been abolished. He submitted that the Respondent has an approved establishment of 1148 lecturers and the current number is only 816 giving a shortfall. That reducing this number will give the retained staff too much work.
 73. Mr. Koceyo further submitted that in the letters of redundancy dated 13th May, 2025 the Respondent has not stated what is going to be paid out to enable discussions on whether or not the payment is correct.
 74. On the criteria under section 40(1)(c) of the Act Mr. Koceyo submitted that the Report from PKF at page 110 of Respondent's bundle states it developed a tool which was data driven due to the number of staff involved. That it was not possible to have a one-on-one discussion between the employee and the consultant.
 75. Mr. Koceyo submitted that PKF took into account factors outside the law such as academic qualifications, age and years before retirement. That those with minimum qualifications were given a low score. That age was also misapplied so that a younger employee with longer years of service was disadvantaged over an older employee with less years of service.
 76. He further submitted that PKF report did not take into account guidelines on staff student ratio and workload. That the report also omitted certain positions such as graduate lecturers. That had the Respondent involved the union these issues would have been raised.
 77. Mr. Koceyo submitted that the process has also contravened ILO Convention 158 and Recommendation 136 on negotiations.
 78. He submitted that relying on data by PKF violates Article 27 of the Constitution on discrimination by using age and proximity to retirement. That the same also violates Article 10 on public participation and Article 41 on fair labour practice.
 79. He submitted that scientific matrix used by the Respondent is not the law. That there was no input of the union in the redundancies. He urged the court to find in favour of the Claimant and grant the orders sought.

Submissions of Claimant (KUSU) in Cause E020 of 2025

80. Mr. Karanja for the Claimant in Cause No. E020 of 2025 associated himself with the submissions of Mr. Koceyo. In addition, he submitted that the process of redundancy did not start in 2022 as stated by the Respondent. That the process started on 2nd April, 2025 when the redundancy notice was issued. That there was supposed to be consultations as supported by the law in section 40 of the Employment Act, ILO Conventions and the Constitution.



81. He submitted that ILO Conventions provide that where an employer contemplates redundancy it should sit down with the union to look at ways of mitigating the loss.
82. He submitted that the university relied on two documents, the PKF report and Auditor General's Report.
83. He submitted that the PKF report relied on documents supplied by the Respondent as is clearly stated at page 106 of the Respondents bundle where it states "report is based on information supplied by the university. We have not verified accuracy" He stated that the court should not rely on a document whose accuracy is in doubt and which was prepared without consulting the employees to verify the information. That the relationship between Moi University and PKF is that of master and servant.
84. On the Auditor's report which was relied on to show that Moi University is struggling the Auditor states "The financial statement does not present fairly the financial position for the year ended ...".
85. He submitted that one of the reasons given for the redundancy by the Respondent is student numbers. That such a decision ought to be supported by credible documents. That the university was supposed to meet with the unions.
86. On procedure Counsel submitted that the Respondent called for a meeting after issuing notice of redundancy. That KUSU stated at the meeting held on 30th May, 2025 that it was willing to support the process after all options have been considered. However, before the parties could meet again the Respondent issued letters of redundancy. He stated all these meetings should have taken place before and not after letters of redundancy. For emphasis he relied on the decision in *Cargill Kenya Limited v Mwaka & 3 others* (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR) (22 October 2021) (Judgment) where the Court of Appeal quoted ILO Convention which provides for giving information in good time.
87. He submitted that the notice dated 2nd April, 2025 does not give the number of staff likely to be affected by the redundancy as required in the law
88. Mr. Karanja further submitted that the meaning of "consultation" was discussed by the court in *Barclays Bank v Muthoni & 2 others* where the court stated that consultation has to be a reality and not a charade.
89. He submitted that looking at the minutes of 2nd May, 2025, the before the information was given the letters of redundancy had been issued. He submitted that when parties appeared in court on 13th May, 2025 the University said there was no intention to issue letters but the letters were issued the same day. That this is bad faith.
90. Counsel submitted that redundancy notice has a purpose. That it is not mechanical. That once a union is notified there is what is supposed to be done.
91. He further submitted that the Respondent violated Article 47 on the right to fair administrative action. That an employee needs to be heard before redundancy is effected.
92. He submitted that the rights of employees must be protected. He urged the court to declare the process unlawful.

Respondent's submission

93. Mr. Kigen for the Respondents submitted that the exercise of redundancy started on 4th July 2022 when there was a meeting between KUSU and the University as per minutes attached to the



- Respondent's bundle which shows the only agenda was redundancy. That KUSU responded by letter dated 9th July, 2022 requesting for documentation such as staff establishment, student ration and other data. That this means the union knew about the redundancy. He stated there was also correspondence between the Respondent and UASU.
94. He submitted that the university thought the financial situation would improve and the exercise was stopped. That there was no improvement and on 2nd April, 2025 letters were issued to KUSU and UASU on intention to declare redundancy. That in the letter the unions were informed about what the employees would be paid.
 95. He submitted the reason for informing the union is for the union to give reasons why the redundancy should not be done. He submitted that by letter dated 9th April, 2025 the unions were invited for a meeting to be held on 24th April, 2025.
 96. He submitted that at the meeting the unions were told why redundancy was inevitable and were asked to give an alternative. That the financial issues were discussed. That other issues discussed were teaching and non-teaching staff ratio and student numbers. That the Claimants asked questions raising issues which were answered. That there was a request for some documents which led to rescheduling of the meeting to 2nd May, 2025.
 97. Counsel submitted that the meeting scheduled for 2nd May was held but the Claimants thereafter proceeded to court seeking to halt the process.
 98. Counsel submitted that from the time the process was commenced the unions were aware but did not make any proposals. That all they did was to criticize the process.
 99. He submitted that the redundancy notices were expiring in 30 days and that by 13th May, 2025 the notices had expired. He submitted that the letters were issued on 14th May, 2025. That it was not intended to defeat the proceedings in court.
 100. He submitted that there were further meetings as directed by the court. That on 27th May, 2025 the deliberations were on the criteria that was used and the reasons for redundancy. That clarifications were given at the meeting in which the Claimants participated. That the unions also gave their positions as reflected in the minutes. That a further meeting was held on 30th May, 2025 at the request of the Respondent. That further meetings were held on 9th June and 16th June, 2025.
 101. Mr. Kigen submitted that the unions were part and parcel of the process. That at the last meeting the unions gave their reactions to the notices.
 102. Counsel submitted that consultations do not mean that parties have to agree on all aspects of the redundancy process. That it means the unions have been engaged and have been given time to consult.
 103. On whether there was compliance with section 40(1)(d) Mr. Kigen submitted that the reason for redundancy was given being overstaffing compared with financial realities. That the notice indicates what employees are entitled to. That the redundancy notices provide the extent in terms of numbers.
 104. That in the case of UASU the numbers were indicated to be 120 while for KUSU the numbers are 390.
 105. On the issue raised on age Mr. Kigen submitted that under section 40(1)(c) of the Act the employer must have regard to seniority in time, skill, ability and reliability of each employee. That in the report of PKF at page 114 there is mention of positive discrimination as persons with disability were excluded from the redundancy.



106. Counsel submitted that the reason why the redundancy was inevitable is that over the years the university has been depending on government funding to pay salaries. That the government support has since dwindled.
107. Further, that government support was based on number of students which had reduced over the years from about 50,000 to about 20,000. That some campuses such as Kericho Campus, Kitale Campus, Nakuru Campus and Odera Akang'o Campus have been closed due to reduced number of students. That upon closure of these campuses the staff came back to main campus.
108. Mr. Kigen further submitted that the Auditor General's Report at pages xi refers to dropped capitation from 3.44 to 2.43 billion, a drop of 30% in funding. That the student ratio to staff and the ratio of academic staff to non-academic staff referred to by the Claimants can only be addressed by right sizing.
109. He submitted that the provisions of Article 27 and 47 were complied with. That people with disability were not affected as positive discrimination.
110. In concluding Mr. Kigen submitted that the Respondent had justified the criteria used for staff rationalization as was held in the case of Kenya Union of Commercial Food and Allie Workers v Tusker Mattresses [2021] eKLR. That meetings were held on 24th April, 2nd May, 27th May, 30th May and 12th June, 2025 for UASU and KUSU. That the main issue for discussion at those meetings was criteria for selection.

Determination

111. Having considered the pleadings on record and the submissions by the parties, the issues arising for determination are whether the Respondent has complied with the law in carrying out the redundancies and what orders should issue.
112. Section 40(1) of the *Employment Act* provides for redundancy as follows:
 40. Termination on account of redundancy
 - (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.

113. In the present case the Claimants have stated that they were served with a notice of redundancy dated 2nd April, 2025. They aver that the Respondent did not engage them in consultations before issuing the notice.

114. The Respondent on the other hand insists that the process of redundancy commenced on 4th July 2022 when it issued a notice of redundancy to the Claimants and the Labour Office. That the Claimants were engaged from that time and have been aware of the redundancy process since then.

115. The letter that provoked the instant proceedings is dated 2nd April, 2025 and is reproduced below:

Moi University

2nd April, 2025

MU/ACD/2/35

National Secretary General,

University Academic Staff Union (UASU)

Box 30198-00100,

Nairobi.

Email: uasunational@yahoo.com

Dear Sir.

Ref: Notice of Intention to Declare Redundancy-Moi University

The above captioned subject matter refers. In accordance with Section 40 of the [Employment Act](#) 2007, Laws of Kenya, and the provisions of the Collective Bargaining Agreement (CBA) between Moi University and the Universities Academic Staff Union (UASU), we hereby give formal notice of an intention to declare redundancy affecting a number of employees who are members of your Union.

This decision has been necessitated by a reduction of revenue brought about by decline in student numbers. This has created a difficult operating environment making it a challenge for the University to meet its financial obligations including payment of employee emoluments. As a result, we are compelled to review our operations and adjust the workforce accordingly so as to ensure sustainability of the University.

During the notice period, we will engage in consultations with the affected employees and their Union representatives, in accordance with the law and the UASU CBA. Our objective is to explore all possible alternatives to limit the impact of the redundancy, including potential redeployment or alternative roles where possible.

We will ensure full compliance with the provisions of the [Employment Act](#), individual contracts, and the UASU CBA 2012/2013. The employees affected will be entitled to:

Severance Pay Salary in lieu of notice



Payment for accrued leave days

Any other unpaid benefits due to them

All necessary deductions will be made in accordance with the applicable statutory requirements.

The details of the employees that shall be affected and the proposed timeline for the redundancy process will be communicated to you in due course.

We seek your cooperation during this process and assure you that it will be carried out fairly and transparently.

Yours

Signed

Prof Kiplagat Kotut, Ph.D,

Ag. Vice Chancellor

116. Similar letters were sent to UASU and KUSU. It is evident from the letter that it is not copied to the labour officer in charge of the area where the employee is employed as provided in section 40(1)(a).
117. The letter is not copied to the labour officer in charge of the area where the employee is employed. It is instead copied to the Cabinet Secretary Ministry of Labour and Social Protection, an office not mentioned in the section.
118. Secondly, the notice is supposed to indicate the extent of the intended redundancy. This means that the notice should indicate how many employees are involved or likely to be involved and in what categories. This was not done in the letter. It is such information that the union would use in the consultations with the Respondent on the redundancy. This notice only indicated that the affected employees would be informed.
119. It is further noteworthy that the notification for redundancy did not indicate timelines. The provision in the Act is that this should be a minimum of one month before the redundancy, meaning that the notice should be ideally longer, but should in any event not be less than one month before the date of the terminations by way of redundancy. An open-ended notice is not a valid notice as both the Claimants and their members had no clue when the redundancy letters would be issued. The failure to indicate the duration of the notice by the Respondent was thus in violation of the provision.
120. The notice further states that the employees affected and their unions will be consulted. There is evidence that the Respondent wrote to the Claimants on 9th April, 2025 inviting them to consultative meeting to take place on 24th April, 2025. There was another meeting on 2nd May, 2025 before the Respondent issued the letters of redundancy dated 13th May, 2025. It is evident that the union was also informed of the extent of the redundancy in letters dated 13th May, 2025 when they were sent copied of the letters issued to their members.
121. The Claimants came to court because the Respondent did not give them the information they had requested for to enable them participate meaningfully in consultations.
122. Meaningful consultations was discussed by Maraga JA (as he then was) in Kenya Airways limited and Aviation & Allied Workers Union Kenya & 3 others

The purpose of the notice under section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in the said 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 minimise 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. This means that if parties put their heads together, chances are that they could avert or at least minimize the terminations resulting from the employer’s proposed redundancy. If redundancy is inevitable, measures should to be taken to ensure that as little hardship as possible is caused to the affected employees”

123. Section 40(1)(a) gives a minimum of one months’ notice before redundancy for this purpose. Where there are lengthy negotiations the employer must give adequate time for such consultations to be concluded. That is why the Employment uses the wording “not less than one month.” One month is thus the shortest notice that can be given. Where consultations cannot be concluded in the one month period, the notice must be extended for such consultations to be concluded.
124. It is further instructive that the consultations take place before the redundancy because the parties are supposed to agree on all the items in section 40(1) before the letters are issued. If there is no agreement, the dissatisfied party is to approach the court for redress by way of an urgent application.
125. The averment by Mr. Kigen that consultations does not mean that parties must agree is therefore not correct. Parties are supposed to agree or seek a resolution from either the court or other bodies as may be provided in either the recognition agreement or the CBA.
126. The importance of consultation was explained in the Employment Appeals Tribunal in *Williams vs Compare Maxam Ltd (1982) IRLR 83* as follows:

“There is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:

1. The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.
2. The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.
3. Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.



4. The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.
5. The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.”

127. It is my finding that in this case the Respondent declared the employees redundant before meaningful consultations were held. It is on record that the Claimant moved with speed after receiving notification of redundancy to engage the Respondent in consultations. UASU asked for documents on 9th April, 2025 while KUSU asked for documents by letter dated 17th April, 2025. They asked for documents to enable them participate effectively in the consultations which were not supplied to them until 30th May, 2025, by which time the Respondent had issued the letters of redundancy.
128. The court finds that the letters of redundancy were issued in bad faith, when the court had sent the parties to carry out further consultations and after Counsel for the respondent assured the court and the other parties that they were not going to issue any letters before the return date given by the court.
129. Section 40(1)(c) provides for the selection criteria being that 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.
130. Seniority in time is usually expressed as the principle of Last in first out (LIFO). It means that the employee who has been in employment longest should be retained and new employees released first.
131. The Respondent informed the court that it contracted PKF to carry out the exercise. In the report of PKF at page 110 in the Respondent’s bundle in cause E018 and page 105 in cause E020.
132. At page 8 of the Report which is page 117 of Respondent’s bundle in cause No. E018 and page 112 of Respondent’s bundle in Cause E020 it is stated that “Employees who possessed more years of experience, especially those with highly relevant work history, were assigned higher scores. Conversely those with fewer years of experience or less relevant work experience received lower scores. This was informed by section 40(1)(c) of the *Employment Act*”
133. The report further states at 6.1 thereof that

A review of the University Employment Policy revealed varying retirement ages across different job categories. The table below outlines the specific retirement ages for each job category within the University:



Job category	grade	Retirement age
Teaching staff	All	70
Non- Teaching staff	1 to 10	60
Non-teaching staff	11 to 15	65
Non-teaching staff (people with disability)	all	65

A staff member's age is inversely proportional to the number of years remaining until retirement. In other words, older staff members are closer to retirement, while younger staff have more years left before they retire. This criterion aligns with Section 40 (1) (c) of the [Employment Act, 2007](#) which approves the consideration of seniority in time through an application of Last-in-First-Out as an objective criteria under Kenyan law. The law envisages retention of more senior employees who are deemed to be more knowledgeable and who possess more institutional memory to facilitate operational continuity and succession planning.

134. Under paragraph 8 of the report it states the parameters considered were academic performance, relevant years of experience and years to retirement. The paragraph reads:
- a) Academic Performance

This measures the individual's educational background and achievements, providing insight into their knowledge and qualifications.
 - b) Relevant Years of Experience

This metric evaluates the individual's experience in the relevant field or role, which is an important factor in assessing their practical expertise and suitability for the job.
 - c) Years to Retirement

This factor accounts for how close the individual is to retirement, which can influence decisions related to long-term planning, succession planning, and resource allocation. Each of these metrics is then converted into a Standard Score which expresses how far an individual's performance deviates from the average of the population. Standardization ensures that each metric is normalized, allowing for an equitable comparison, regardless of differences in scale or measurement units.
135. While making his submissions Mr. Kigen stated that persons with disability were also excluded from the redundancy exercise on grounds of positive discrimination. While positive discrimination should be encouraged, this is a matter that could also have been a subject of consultations as there may be other categories of staff deserving of such positive discrimination for example persons suffering from terminal diseases who are not necessarily persons with disability, or minority groups etc.
136. PKF report is dated May 2025 after the redundancy notice was issued on 2nd April, 2025. Since the report was the basis upon which selection was done by the Respondent, the Claimants ought to have been involved during the preparation of the report to ensure that the criteria used was acceptable in



view of the fact that under section 40(1)(c) the Claimant is entitled to question the criteria for selection. It is also clear that the criteria used by PKF was not what is provided for in section 40(1)(c) which requires that as a general rule, the employer applies the LIFO principle. The other considerations of skill, ability and reliability are supposed to be based on assessment of performance assessments that are verifiable.

137. It is further evident that the criteria by PKF was used across the board yet it is supposed to be applied only within a particular class of employees, that is, comparing like with like. For example the Respondent needed to agree on how many lecturers in a particular department were to be retained and then use the criteria to determine who among the lecturers would be retained in service and which ones would be declared redundant. This exercise ought to have been carried out for employees in all the different cadres and departments.
138. From the report of PKF, it is evident that the selection criteria used disadvantaged some employees and advantaged others contrary to the provisions of section 40(1)(c) of the Act.
139. As was submitted by both counsel for the Claimants, consultations are supposed to be in good faith. Mr. Kigen's submission that the parties did not need to have a consensus is not the correct position. Parties are supposed to either have consensus or seek an arbiter to reconcile the parties or make a determination.
140. As has been restated by courts consultations are not a cosmetic exercise. Real consultations are made in good faith.
141. To this end I find that the selection criteria did not comply with the law.
142. On the reasons for the redundancy the Respondent submitted that it was necessitated by reduced number of students leading to reduced revenue and the closure of some colleges. He further submitted that government funding which the Respondent heavily relies on has reduced by about 30% as reflected in the audit report. It is a matter of public knowledge that the Respondent has not been doing very well. It has been in the media for a while with one issue or another, all of which are a pointer to the need for reorganization. In any event reduction in funds is not the only reason why a redundancy may be carried out. An organization that is thriving can reorganize leading to redundancies in order to perform even better.
143. In the instant case I have no doubt that it was necessary for the Respondent to carry out the redundancies.
144. The court has further noted that although the Respondent has heavily relied on the ground that it is financially not doing well, no evidence was adduced as to the funding of the redundancy. Section 40(1) provides that payments for employees declared redundant must be made before they are released. The opening words of section 40(1) are: "An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions-..."
145. From the foregoing it is my finding that although there is valid reason to carry out redundancies, the process has been flawed. There were no proper consultations with the Claimants and the letters issued by the Respondent to the affected employees were done prematurely before setting out an objective criteria for identification of the employees and sharing the same with all the affected parties.
146. Throughout the hearing the Respondent has not articulated what criteria was used other than pointing the court to PKF report. The report does not contain any information on the actual selection. There has been no demonstration by the Respondent that the selection was done in compliance with the provisions of section 40 of the Act.



147. The letters were also issued on after the assurance of counsel for the Respondent that the Respondent was not going to issue the letters until after the consultations directed by the court had been held. As I have already pointed out, this reflects bad faith on the part of the Respondents as the letters were dated 13th May, 2025 while the assurance was made to the court on 14th may, 2025, a day before the court session and issued immediately after the court session.

148. For the forgoing reasons I make orders as follows:

- i. The letters of termination of employment due to Financial Challenges Across All Departments dated 13th May, 2025 issued to the members of the Claimants are hereby withdrawn;
- ii. The Respondent is free to immediately commence the redundancy process afresh in strict compliance with section 40(1) of the *Employment Act*;
- iii. The employees to be released on redundancy are to be paid their redundancy dues in the manner provided in section 40(1) of the *Employment Act*.

149. Each party shall bear its costs.

150. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 11TH DAY OF JULY 2025

MAUREEN ONYANGO

JUDGE

