



Muthumbi v Track and Trace Limited (Employment and Labour Relations Cause E048 of 2022) [2025] KEELRC 2036 (KLR) (4 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2036 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E048 OF 2022**

JW KELI, J

JULY 4, 2025

BETWEEN

BEATRICE MUTHONI MUTHUMBI CLAIMANT

AND

TRACK AND TRACE LIMITED RESPONDENT

JUDGMENT

1. The claimant, following termination of employment on the basis of redundancy and being aggrieved with decision, filed a memorandum of claim dated 26th January 2022 received in court on the 28th January 2022 against the respondent seeking the following reliefs:-
 - a. An Order that the Respondent does pay the Claimant's terminal dues and damages of Kshs.9,613,334/= as particularized;
 - b. An Order for punitive and exemplary damages;
 - c. An Order that the Respondent furnishes the Claimant with a Certificate of Service;
 - d. Costs of the claim and interest thereon;
 - e. Any other Orders that the Court may deem just and expedient.
2. The claimant in support of the claim filed verifying affidavit together with the claim, her witness statement dated 26th January 2022, claimant's list of documents of even date together with the bundle. The claimant filed a further list of documents dated 18th July 2022 and 14th March 2023 together with the bundle.
3. The respondent entered appearance through Kitoo and Company advocates and filed a response dated 14th March 2022, a witness statement of Edward Njoroge dated 8th June 2022 and a list of documents dated 8th June 2022 together with the bundle of documents.



4. The claimant filed reply dated 19th May 2022 to the response.

Hearing and evidence

5. The claimant's case was heard before Justice Ocharo Kebira on the 17th April 2023 where the claimant testified on oath and adopted her witness statement dated 26th January 2022, and produced her documents under the three lists of documents marked C-exhibits 1-27. The cross-examination was done on the 4th October 2023 and 23rd November 2023 by Ms.Kitoo for the respondent.

6. The respondent's case was heard before me on the 5th March 2025 where Edward Njoroge was RW1. He testified on oath and adopted as his evidence in chief his witness statement dated 8th June 2022 and produced their documents under list dated 8th June 2022 as Exhibits 1-5 and list dated 14th April 2025 as R-exhibit 6.

Claimant's case

7. The Claimant states that in October, 2016 she was employed by the Respondent as General Manager-ECTS and thereafter transitioned to the position of Managing Director ECTS in the year 2020. At the time of termination of her employment, the Claimant was earning a salary of Kshs.400,000/= per month.

8. The Claimant avers that prior to her employment, she was handpicked from another company by the Respondent's Director and Chief Executive Officer (CEO) to set up the Electronic Cargo Tracking System (ECTS) as a new division of the Respondent company, where after she carried out all preliminaries before her official appointment as the General Manager - ECTS.

9. Upon engagement, the Claimant carried out her duties diligently, putting in place the relevant structures and recruiting staff to operate a fully functional arm of the company, and despite regular interference and arbitrary decisions from the Respondent's management, the Claimant still managed to meet and surpass set revenue targets.

10. In the month of November, 2021, while the Claimant was out of the country on official leave, she received communication from the CEO suggesting and prodding her to resign. This communication was totally unexpected, the Claimant having received no prior notice.

11. Despite the Claimant's response requesting to discuss the matter upon resuming on 13th December, 2021, the Respondent went ahead to cut the Claimant out office communication links and purported to restructure the company literally leaving the Claimant without employment even before official communication.

12. The Claimant of her own initiative set up a meeting with the CEO on 8th December, 2021 seeking to discuss her employment, but by then, the Respondent had already phased her out of employment.

13. On 15th December, 2021. the Claimant was informed via email that her employment was terminated with effect from 13th January, 2022 due to redundancy and asked to hand over to the management.

14. It is the Claimant's case that the Respondent's act to terminate her employment allegedly on grounds of redundancy is unprocedural, unlawful and unfair and lacking in good faith and without any justification and in contravention of the law.

15. The claimant listed the particulars of Illegality/ Irregularity/ Unfairness as follows;-

- i. The exercise of restructuring was carried out conveniently when the Claimant was away on official leave without informing or notifying the Claimant first,



- ii. No prior Notice was served on the Claimant and Labour Officer as provided for in law before the restructuring and any notice purportedly served thereafter was an afterthought;
 - iii. At the time of termination of the Claimant's employment, the Claimant was the only employee out of a permanent staff force of 51 who was dismissed and without due regard to seniority in time and skill, ability and reliability contrary to the law;
 - iv. The reason cited as the cause of redundancy is not convincing as the division headed by the Claimant was started and continued making sizeable profits for the Respondent surpassing its set revenue targets despite the existence of the Regional Electronic Cargo Tracking System deceptively cited as the cause;
 - v. The Claimant, a senior member of staff, with experience and skill, was not offered an alternative position in the new arrangement yet her division's streams of revenue still exist, members of her team mostly recruited by herself were retained, new positions created and salaries increased
 - vi. Evidence of lack of good faith is manifest in the fact that the Claimant was denied her salary for work done and unrelated to the termination until the Respondent was served with notice of intention to sue.
16. The Claimant further states that the Respondent failed to furnish her with a Certificate of Service as required by law. The claimant sought for payment of terminal dues and compensation for unfair termination with total claim of Kshs. 11,600,000. In reply to response the claimant admitted receipt of Kshs. 1,986,666 into her account from the respondent after she served demand to sue.

The Respondent's case

17. The Claimant was an employee of the Respondent. The Claimant underwent normal recruitment processes and was appointed since she was qualified for the position. The division the Claimant was appointed to run was in existence before her appointment.
18. At all times the Respondent accorded the Claimant support and denies any regular interference and arbitrary decisions.
19. The Respondent in running her business was affected by the regional Electronic Cargo Tracking System which was introduced by the Kenya Revenue Authority. This meant that Kenya Revenue Authority took over the running of the systems and this affected the Respondent's business as most of their clients opted to Use KRA since their services were much cheaper. This saw t several Respondent clients drop out.
20. The Claimant was well aware of the situation at her department as the Regional Electronic Cargo Tracking System (RECTS) affected the Electronic Cargo Tracking System (ECTS) which she headed. As such, the Claimant was well aware of the situation and the challenges faced. This was also discussed in several meetings attended by the Claimant. The Claimant admitted the effect the takeover had caused.6. The Claimant's position therefore became untenable and unsustainable. This also affected all the other employees in the Claimant's department.
21. It is therefore not true that the division continued to make profits after the Regional Electronic Cargo Tracking System came by. The Respondent further avers that it did not create any new positions neither did it retain any employees in the ECTS department as business had gone down.
22. Prior to termination, the Claimant was illegally out of the office as her leave days had not been approved by myself and I only found out that she was out of the country when I was following up on her



whereabouts. I was her supervisor and approved all her leave days whether, annual, compassionate or sick leaves. I did not approve her last alleged leave when she stayed away from office for almost two months.

23. The respondent asserted that it did not at any point suggest to the Claimant to resign. It gave her reasons why the company was declaring her redundant a fact that she was well aware of. The respondent notified the Labour office of its intention to restructure on 19th November, 2021. Thereafter had a virtual meeting with the Claimant since she indicated that she was out of the country and informed her of the management's decision to declare her redundant. It gave her a one month's notice and issued her with a termination letter indicating that upon clearance, she would be paid her terminal dues on or before 13th January, 2022.
24. The respondent received a demand letter dated 21st December, 2021 from the Claimant's advocate and through their advocate reiterated the above facts. The Claimant despite several requests to clear with the company failed to clear with the company. The Respondent nevertheless deposited her terminal dues which included her unpaid salary for the month of November, 2021, unpaid salary for 14 days in the month of December, 2021, one-months' salary in lieu of notice and severance pay totalling to Kshs. 1,986,666.00 as at 13th January, 2022 as indicated in the demand letter.
25. The Respondent was kind enough to pay her salary for the days in November and December 2021 that the Claimant was illegally out of office. The Respondent went ahead to issue the Claimant with a certificate of service irrespective of her failing to clear with the company to date.
26. The Respondent hence followed due procedure before terminating the Claimant on account of redundancy. The Claimant is hence not entitled to any of the reliefs sought at the Particulars of the Claimant's Terminal Dues of the Claimant's Statement of Claim. The respondent urged the court to dismiss this suit with costs as it is an abuse of court process.
27. The parties filed written submissions after close of the respondent's case.

Determination

Issue for determination

28. The court found that the parties were in agreement on the issues for determination in the dispute to be:-
 - i) Whether the Respondent had any valid reason to terminate the Claimant's employment.
 - ii) Whether the Respondent observed, the law, fair procedure and the principles of natural justice in terminating the Claimant.
 - iii) Whether the Claimant is entitled to the reliefs sought.
 - iv) Who should bear the costs of this suit?

Whether the respondent had any valid reason to terminate the claimant's employment.

28. The prove of the reason for termination of employment is according to the provisions of section 43 of the [Employment Act](#) as read together with section 45. Section 43 provides as follows:- '43. Proof of reason for termination
 - (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.



- (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”(emphasis given). Further Section 45 reads:- ‘(1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove—
- (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”

29. The claimant was issued with a termination letter dated 14th December 2021 which is reproduced as follows:-

“TrackTroce

Termination letter

Track and Trace Company

14th December 2021

Subject: Beatrice Muthoni Muthumbi, P.O Box xxxxx-00100, ID Number: xxxxxxxx, Email

Address: bettyxxxxxxx@gmail.com

Re: Termination of Contract

Dear Beatrice,

On behalf of Track and Trace Company I regretfully wish to inform you that your contract with the Company has been terminated with effect from 13th January 2022.

The reason for your termination as earlier advised is due to redundancy. Your position has no longer become tenable to our organization and is no longer available. This is because of the Regional Electronic Cargo Tracking System that has affected business in the division that you were handling therefore rendering the position that you held redundant.

You will recall that we have had discussions with you on this issue on 8th November 2021. We have tried to place you elsewhere within the Company however we did not have any other openings for you. We have also explored the position of sending you on unpaid leave until such time that the Company shall recover but we cannot hold you in abeyance since we do not know when this shall be.

This Company will pay your terminal dues including 15 days severance pay for every year worked. The Company is obliged to issue you with a month's notice of termination. The Company will however pay you in lieu of notice and for the days worked.

Enclosed is a release of claims document that we shall expect you to sign and send back. All statutory and employee entitlement will be paid in your nominated bank account not later than 13th January 2021 upon complete clearance with the Company.



We expect your full corporation and support in handing over from your department to the management.

We wish you well in your endeavors.

Sincerely,

Carol Njihia”

30. The question then before the court is whether the reason or declaration of redundancy being :- ‘Your position has no longer become tenable to our organization and is no longer available. This is because of the Regional Electronic Cargo Tracking System that has affected business in the division that you were handling therefore rendering the position that you held redundant.’ was valid.

The claimant’s submissions

31. Despite the Respondent’s contention that the Claimant’s termination was due to the introduction of the Regional Electronic Cargo Tracking System (RECTS) by KRA, the division continued making profits in the ECTS business and the other forms of revenues.
32. The Claimant states that she received no prior notice of termination of her employment on grounds of redundancy and this was only indicated in her termination letter. That she was phased out of employment without any notice long before the termination letter was served on her (Ref: emails on documents 3, 4, 5 and 6 on the Claimant’s Supplementary List of Documents numbered pages 4-8).
33. That she had only received prodding from the Respondent’s CEO (DW1) on phone asking her to resign, which she declined. That there seems to have been discussions going on in the Respondent company in the absence of the Claimant prior to her termination while deliberately leaving out the Claimant despite her being a senior employee of the Respondent and herself and the division she headed being majorly affected. In any event there was never any discussion even in this group on the issue of redundancy for any member of staff (Ref: correspondence above-referenced).
34. The division headed by the Claimant was not done away with as claimed by the Respondent but seems to still exist or to have been merged and staff members absorbed in the company (Ref: doc. 4 above (page No. 5) of Supplementary list above).
35. In fact, as at November 24, 2021, the Respondent Company was recruiting staff members for ECTS, the division headed by the Claimant (Ref: Email of November 24, 2021 from the MD tracking Division to the new HR Manager, Carol Njihia (Doc 7 in the Claimant’s Supplementary List of Documents (numbered page 11). Yet the purported Notice to the Labour Office was prepared on 4th October, 2021 and served on 19th November, 2021, before the date of the email communication herein (Ref: Doc. 2 In the Respondents List of Documents dated 8th June, 2022).
36. It is the Claimant’s case that the reason given for her termination is not valid as the Respondent company was still making profits at the time of her termination and barring her exclusion from her office and being sidelined, her division was set to meet and surpass its target for the year 2021. (Ref: Email of September 8, 2021 from the Claimant to the Respondent’s CEO (DW1) appearing as part of Document 15 in the Claimant’s Supplementary List of Documents (page 47 of the documents) and Email of November 9 2021 (page 30 of the documents). She reckons in her statement and evidence in court that she believes, that even in her absence the target was met.



37. The Claimant's concerns about the goings-on in the Respondent company prior to her unceremonious termination were largely ignored (Ref: Email from Claimant to DW1 - Doc 3 (numbered page 4) in the Claimant's Supplementary List of documents).
38. The claimant alleged discrimination and submitted that it is clear from the Respondent company's senior management correspondence produced, that the Claimant was the only one targeted to be phased out and her termination was not made in good faith, was unprocedural and totally uncalled for.

The respondent's submissions

39. As a general rule, redundancy is a fair reason for termination for as long as the employer can prove that actual redundancy was the reason for termination. In the case at hand, the Respondent demonstrated that the entire division headed by the Claimant had become untenable. This position was confirmed by the Claimant in her email of 10 Feb, 2021 at 1732 (page 8 of the Respondent's exhibits) while responding to a concern from the Respondent's CEO on the lost business to KRA ECTS, the Claimant stated as follows;

“The support for KRA business has reduced with an average of 50 units per day. To manage this, we have taken measures to reduce the no of workers who are not fully engaged at the moment.”

40. The Claimant via email on Friday 18 Jun, 2021 at 10.29 (page 6 of the Respondent's exhibits) also stated as follows; "RECTS factors- This has pressed the SVU/KRA business to be challenging lately thus rendering us pretty disadvantaged in the interim. However, citing our last VI meeting discussion IF we press through to survive, this matter will be regularised as time goes by".
41. The Claimant in another email on Wednesday, September 8, 2021 at 8.05 am (page 47 of the Claimants supplementary list of documents dated 18th July, 2022 indicated to the Respondent's CEO, that as at that time profitability was at 12% whereas the company's expectation was 30%. The revenue numbers for FMS and Speed limiters needed to increase from the current 13% and 20% respectively to the right set goal numbers. She also indicted that the collection rates needed to improve.
42. From the emails above, it is correct to state that the Respondent's ECTS division that was headed by the Claimant was struggling and the Claimant was consulted from time to time by her supervisor, the CEO as shown in the emails above, where she confirmed the effect of Rects(KRA Regional Electronic Cargo Tracking Systems) to the Respondent's revenue. She proposed to have some workers reduced. She also hoped that they would Survive.
43. It was also confirmed that the Respondent's clients opted to use Rects(KRA Regional Electronic Cargo Tracking Systems) and hence disengaged services with the Respondent. This is evidenced from an email received by one of the clients (Email dated Thursday, 31 Dec 2020, 13.32, page 7 of the Respondent's documents. The client confirmed that KRA had issued instructions stopping ALL service providers arming trucks at loading depots. This was entirely what the Respondent's ECTS division was tasked with.
44. Section 40 of the *Employment Act* provides for the procedural requirements for redundancy. It provides that the employee be issued with notice of intention to be declared redundant by the Respondent. The Claimant was away from office without approval as at the time the decision for declaring employees of the ECTS division redundant. The Claimant being a senior employee, the Respondent's found it fit to address the issue with her one on one. The Respondent's CEO upon contacting the Claimant came to learn that she was out of the country. The Claimant and



the Respondent's CEO Mr Edward Njoroge had a virtual call on 8th November, 2021 where the communication on declaring her redundant was had. It is not in dispute that a virtual call was had on 8th November, 2021.

45. The Claimant alleged that she was implored to resign on the virtual call. DW 1, the Respondent's CEO disputed this position and indicated that he was communicating the intention to declare her and employees of her division redundant. Furthermore, this is a conversation that had been had with the Claimant over time since KRA introduced their systems and most clients opted for it.

Decision on issue 1.

46. The respondent produced a letter to the Labour office dated 4th October 2021 titled organisational restructuring which the respondent stated was received on 19th November 2021. The letter stated;-

'Re: Organizational Restructuring

We trust that this email finds you well.

Reference is made on the above mentioned subject.

The company wishes to inform you of an ongoing restructuring process that will see us confirm some positions redundant for the next one year. The decision has been brought about due to the below listed reasons:

Introduction of Rects(Regional Electronic Cargo Tracking System) that has affected the company's revenue

Covid 19 which have greatly affected the operations negatively and affected the company's revenue."

47. During the hearing, the claimant confirmed that the CEO raised the issue of the business which had reduced daily by 50 units. The claimant confirmed the reductions of 50 units per day but qualified she did not agree with the extent. She stated that she promised to take action by ensuring the staff do things differently vide email dated 10th February 2021. On reduction of workers not fully engaged she told the court she meant casual workers. The claimant confirmed that as per her email of 8th September 2021, 4 months to end of the year she had achieved 12 % profitability instead of the forecasted 30%. The claimant confirmed that due to instructions of KRA some of the customers like Eureka left but denied loss of substantial business. She confirmed that the ECTSA WhatsApp ground which she headed was closed. At re-examination the claimant stated that there were other capacities she was competent in apart from ECTS. She confirmed that by 22nd December 2021 her division had been done away with stating it was merged with other divisions.
48. RW1 was the CEO, Edward Njoroge. He confirmed the ECTS was for KRA. RW1 did not have the financial statements on how the business had reduced or how Covid 19 affected the business. RW1 told the court the redundancy was effected over time starting with email of February 2021 when the claimant suggested to do away with staff not engaged in her division. That the context was that the single client KRA had exited. That the email by the claimant indicated workers not fully engaged and that would include her if not fully engaged. RW1 stated the division had 2 other revenue streams which failed with 12 % profitability of the ECTS division. In re-examination RW1 told the court the redundancy was based on that their client KRA through the system of REC had replaced them and that was the core duty of ECTS.
49. The court found it was not in dispute that KRA had replaced the respondent as a client and that was the core business of ECTS division of the company where the claimant was engaged as the Managing



Director. There was undisputed prove that the business numbers had gone down and the claimant admitted that the division profitability 4 months to end year was at 12 % compared to the forecasted figure of 30% as per her email to the CEO dated 8th September 2021. The court took judicial notice that COVID 19 affected businesses negatively globally hence no need of prove of the same. The court was convinced that the main reason for the redundancy of the claimant was the withdrawal of the main client KRA which was the core business of ECTS division of the respondent. This was the reason stated in letter to Labour office and in letter of termination. The court finds that the reason existed as per section 43 of the Employment Act hence valid.

Procedural fairness.

50. The procedural fairness of redundancy is as per section 40 of the Employment Act to wit:- ‘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.”

The claimant's submissions

51. Section 40 of the Employment Act as laid out above is instructive on the procedure the Respondent ought to have taken before purporting to lay off the Claimant on account of redundancy. The Court, in the case of Martin Mwangi v Protocol Solutions Limited [2022] eKLR stated that a redundancy conducted in violation of Section 40 of the Act is an unfair termination under Section 45 of the Act. In the present case, the Claimant was never notified in writing (as required under Section 40) or even verbally of her impending termination on account of redundancy. The Claimant stated that despite DW1 imploring her to resign, which she declined, at no point was she notified that her services would



be terminated and more so, on account of redundancy. From correspondence produced and referred to in court, all along upto December, 2021, the Claimant and DW1 were discussing reorganizing the ECTS Division going forward. The first time that the issue of redundancy was revealed to the Claimant, as she stated, was in her letter of termination dated 14th December, 2021. The court will note that no such notice was produced by the Respondent to rebut the Claimant's assertions. In the case of *Kenya Hotel and Allied Workers Union v Oakplace Hotel Limited* [2021] eKLR the court faulted the Respondent for failing to serve any prior written notice on the Claimant and found that as one of the reasons for declaring the termination unlawful.

52. In the case above, the court found that: "for redundancy to be valid, the employer must prove that both the labour officer and the employee or the employee's union, where there is one, have been notified at least one month before the redundancy takes place." The Respondent further Claims that vide its letter of 4th October, 2021 to the Ministry of Labour, received at the ministry on 19th November, 2021, it duly notified the labour office of impending redundancies. The claimant submitted that that the Notice does not meet the requirements of Section 40 for the following reasons:

- (i) The Notice was served on the Ministry on 19th November, 2021 while the Claimant's employment was terminated vide a letter dated 14th December, 2021, less than the requisite 30 days provided for by the Act.
- (ii) The notice does not give reasons or proper and valid reasons for the impending redundancy.
- (iii) The Notice does not indicate the extent of the intended redundancy. Who were the employees to be laid off, period when the exercise was to take place and other crucial information was not provided.
- (iv) The Notice does not indicate how the employees to be affected were identified.

(Ref: Decision in Martin Mwangi above)

53. The Respondent also needed to demonstrate clearly that in conducting the exercise, due regard was had to seniority in time, to skill, ability and reliability of employees to be affected by such redundancy. No such consideration was demonstrated. In fact, the court has no idea what criteria was used to lay off the Claimant and whether any other employees were ever laid off. The Claimant stated and this was confirmed by DW1 that she was second in command after the CEO (DW1) and she headed the ECTS Division and had recruited all the staff under her. This follows that she was the most senior and first in time as compared to other employees in her division. Yet from the correspondence shown, her junior staff were retained and in fact were discussing recruitment of further staff while she was maliciously sidelined and later shown the door. No other employee was laid off. It is also clear that, if indeed the Respondent was restructuring, no offer was made to the Claimant to take up any other position even at a reduced salary.

54. The inescapable conclusion is that the Respondent did not observe fair procedure in terminating the employment of the Claimant herein. One can only observe that it was not done in good faith and the Respondent's intention to push out the Claimant was a foregone conclusion from the onset and the inadequate and pathetic attempt at complying with the law was an afterthought and a cover up.

Respondent's submissions

55. Section 40 of the *Employment Act* provides for the procedural requirements for redundancy. It provides that the employee be issued with notice of intention to be declared redundant by the Respondent. The Claimant was away from office without approval as at the time the decision for declaring employees of the ECTS division redundant. The Claimant being a senior employee,



the Respondent's found it fit to address the issue with her one on one. The Respondent's CEO upon contacting the Claimant came to learn that she was out of the country. The Claimant and the Respondent's CEO Mr Edward Njoroge had a virtual call on 8th November, 2021 where the communication on declaring her redundant was had. It is not in dispute that a virtual call was had on 8th November, 2021.

56. The Claimant alleged that she was implored to resign on the virtual call. DW 1, the Respondent's CEO disputed this position and indicated that he was communicating the intention to declare her and employees of her division redundant. Furthermore, this is a conversation that had been had with the Claimant over time since KRA introduced their systems and most clients opted for it. The labour office was also informed via a letter dated 14th October, 2021 and received on 19th November, 2021. The reasons for restructuring and declaring staff redundant are well stated in the letter and the introduction of RECTS (Regional Electronic Cargo Tracking System) was one of them.
57. The claimant was issued with a termination letter on account of redundancy dated 14th December, 2025 giving her a one months' notice. The claimant was also paid her terminal dues which included; unpaid salary for the month of November, 2021, Salary for December, 2021. one month's salary in lieu of notice and severance pay totalling to Kshs. 1,986,666.00. The Claimant also alleges that the Respondent did not follow the selection criteria and did not use the first in last out criteria. She also alleges that she was not assigned any other position. It is important to note that she held the position of Managing Director, ECTS division. She was the sole occupant of that position and hence the issue of selection criteria could not arise. There was also no vacancy of such magnitude in the company that could be assigned to her. The division of ECTS was completely closed down as indicated by DW 1 and the offices they held at Panesar Building along Mombasa Road closed down. The division became non-existent. The Claimant in her evidence intimated that the division was still in existence but did not provide any proof to that effect. DW 1 in his evidence indicated the division that was housed in Panesar Building along Mombasa road was closed down.
58. The court in the case of *Makokha v Deloitte Limited* (Employment and Labour Relations Cause 91 OF 2019) [2023] KEELRC 723 (KLR) (23 March 2023) (Judgment) stated as follows:-

“The fact of selection of the individuals to be released from employment presupposes the presence of more than one individual in the same cadre that is affected by the redundancy... In the premises, I agree with the Respondent that in the circumstances of this case, the issue of selection was a non-issue”

Decision

59. The court noted that indeed the notice to labour office of 19th November 2021 was few days short of one month notice under section 40 of the *Employment Act*. The court had no basis to doubt that the claimant had been consulted orally (she admitted there was a WhatsApp call though she stated the CEO asked her to resign) on termination of her employment based on issues affecting her division which she confirmed was closed as at 22nd Decembers 2021. The claimant was away from work for 2 months on leave which RW1 as her immediate boss said he did not approve. The *Employment Act* requires issuance notices as follows:-

‘40(1)

- (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;’ There was no compliance. The claimant was an MD reporting to the CEO. She was 2nd in command. I upheld the decision in *Makokha v Deloitte Limited* (Employment And Labour Relations Cause 91 of 2019) [2023] KEELRC 723 (KLR) (23 March 2023) (Judgment) which stated as follows;”The fact of selection of the individuals to be released from employment presupposes the presence of more than one individual in the same cadre that is affected by the redundancy... In the premises, I agree with the Respondent that in the circumstances of this case, the issue of selection was a non-issue.’ For lack of compliance with notices the procedure followed by the respondent is held as flawed.

On whether the claimant was entitled to reliefs sought .

60. On the 13th January 2022 the claimant was paid Kshs. 1,986,666 being Unpaid salary of the month of November 2021, unpaid salary from 1st December 2021 to 14th December 2021, one moth salary in lieu of notice and severance pay @ 15 days for every year worked. The claimant acknowledged the payment. These were the same claims stated in claim dated 26th January 2022 and filed on 28h January 2022. The letter of termination had indicated the payments would be done not later than 13th January 2021 upon clearance. The claimant did not proceed to do clearance but was paid as her advocate sent a demand letter.
61. The claimant further sought 24 months’ salary for unfair termination. The law limits compensation for unfair termination to 12 months where the reasons for the termination are not justified under section 49 of the *Employment Act*. The reason for the redundancy was justified in the instant case and the process was held as flawed. The claimant is awarded 1 month salary for the flawed procedure taking into account she had been fully compensated as per the section 40 of the *Employment Act*.

Conclusion

62. In the upshot the reason for the termination is held as lawful. The procedure is held as flawed. The claimant is awarded 1 month salary Kshs. 400,000 for the procedural unfairness with interest at court rates from date of judgment and costs of the suit.
63. Stay of 30 days.
64. It is so ordered.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MACHAKOS THIS 4TH DAY OF JULY 2025.

J.W. KELI,

JUDGE.

In the Presence of:

Court Assistant: Otieno

Claimant – Ms Wanyonyi

Respondent: Ms Kitoo

