



**Maina v Nairobi Women’s Hospital (Cause E276 of 2021)
[2024] KEELRC 362 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 362 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E276 OF 2021
JK GAKERI, J
FEBRUARY 27, 2024**

BETWEEN

ANTHONY KINYURU MAINA CLAIMANT

AND

THE NAIROBI WOMEN’S HOSPITAL RESPONDENT

JUDGMENT

1. The Claimant commenced this suit on 7th April, 2021 alleging unfair termination of employment by the Respondent and prays for;
 - i. A declaration that termination of employment by the Respondent was unfair and wrongful.
 - ii. Compensation in the sum of Kshs.6,349,200/=.
 - iii. Certificate of service.
 - iv. Costs of this suit.
 - v. Interest on the above until payment in full.

The Claimant’s case is pleaded as follows;

2. The Claimant avers that he joined the Respondent on 3rd January, 2017 as the Chief Officer Internal Audit at Kshs.150,000/= per month which had risen to Kshs.529,100/= by the time of termination and the salary review was performance based.
3. It is the Claimant’s case that he discharged his duties faithfully, diligently and professionally.
4. That on 9th August, 2020 during a meeting of the Audit Committee of the Respondent’s Board of Directors, one Director, Mr. Jide Olanrewaju remarked “do we now have a new head of internal audit” in the Claimant’s presence who was the Head Internal Audit.



5. That on 10th November, 2020, the Claimant was summoned for a meeting by the Chief Executive Officer, Dr. Christopher Abeid and the Chief Human Resource Officer, Nancy Mwabili and asked to respond to concerns raised by a forensic investigation and was issued with a notice of intent to declare redundancy on 11th November, 2020 as he prepared his response, which he forwarded on email on 13th November, 2020.
6. The notice accorded him one month's notice.
7. That on 9th December, 2020, the Respondent informed the Claimant that it had engaged the firm of Ernest and Young (E&Y) to conduct risk assessment and develop an annual audit plan for the entire Evercare Group, a replica of a plan prepared by the Claimant in June 2020.
8. That on 14th October, 2020, the Claimant had been instructed by the Chief Executive Officer to organize a meeting between Internal Audit and E&Y and the same was held on 16th October, 2020 and capability assessment tests were conducted by E&Y and it took over the Internal Audit function of the Respondent at the instigation of the Respondent's Board of Directors as the Internal Audit function was dissolved.
9. It is the Claimant's case that the conduct of the Respondent amount to a termination of employment without a valid reason, no hearing and was predetermined.

Respondent's case

10. In its response dated 7th May, 2021, the Respondent avers that it is currently under the Evercare Group of Companies and admits that the Claimant was its employee as alleged reporting to the Audit, Risk and Compliance Committee and the CEO.
11. It denies that the Claimant was diligent and the isolated comment by the board members was misplaced and out of context as no details were availed.
12. The Respondent avers that the Claimant was required to comment on the forensic investigation and the same had been made earlier and the meeting was not a disciplinary hearing.
13. It is Respondent's case that it issued the Claimant the statutory one month notice to declare redundancy on 11th November, 2020 and notified the Ministry of Labour Social Security and Services that the redundancy was occasioned by dissolution of the Internal Audit and Risk Department, which would render 4 individuals jobless and it was mutually agreed that the Claimant serves the notice away from the office after handing over.
14. That the Claimant was not subjected to any disciplinary hearing or denied the right to be heard.
15. According to the Respondent, the redundancy notice was issued after a consultative meeting on 10th November, 2020 and was not based on the Claimant's ability as he acknowledged by email dated 23rd November, 2020.
16. That the decision to dissolve the department of Internal Audit and Risk was a strategic operational decision lawfully made by the Board of the Respondent to outsource the same to (E&Y) whose mandate was wider and the Claimant was aware of the same.
17. That the Claimant was aware of the impending redundancy, was given a notice and was supportive of the process and exhibited eagerness for its expeditious conclusion and the Respondent proceeded as such and paid the Claimant Kshs.4,150,898.22 which he received without objection.
18. That the claim of unfair dismissal by the Claimant was baffling.



19. The Respondent denies having terminated the Claimant's employment as the decision was organizational and prays for dismissal of the Claimant's suit with costs.

Claimant's evidence

20. On cross-examination, the Claimant confirmed that the meeting on 10th was attended by the Chief Executive Officer and the Human Resource Officer and he was not informed of the redundancy and the Respondent was under the Evercare Group but operating distinctively.
21. That the Respondent had been suspended by the National Hospital Insurance Fund (NHIF), which suspension was extended in July 2020.
22. That he received accusations levelled against him by word of mouth and had no record and there was no restructuring although the Chief Executive Officer was dismissed.
23. The Claimant admitted having attended a zoom meeting in September 2020 with one Meral, the Chief Finance Officer and other persons where the internal audit function was discussed.
24. He admitted having negotiated severance pay from 3 to 4 years but denied having consented to the process although he received his dues and did not refund the same.
25. He denied having been offered the position in July 2022 as he was invited for an interview and did not respond.
26. On re-examination, the Claimant stated that he declined the interview for want of good faith, salary was low and it was a fixed term contract and reply was needed in 24 hours.
27. That the Respondent had indicated that it was outsourcing the Internal Audit department.
28. That the redundancy came by way of notice dated 11th November, 2020 and he was unaware of the restructuring.

Respondent's evidence

29. Barbara Karwitha confirmed that she was the Respondent's Chief Finance Officer and joined the Respondent after the Claimant had left.
30. It was her testimony that Evercare was not operating in Kenya and the Respondent had since exited the group but admitted that she had not been to its website in the recent past.
31. The witness admitted that the new position was a fixed term contract, salary at Kshs.167,000/= and response was required within 24 hours.
32. RWII, Dr. Sam Thenya confirmed that the Respondent was currently not part of the Evercare Group having left in September 2023. That the Respondent engaged E&Y in 2018 on all business lines including procurement.
33. He confirmed that he was unaware of any disciplinary issues against the Claimant for the entire duration of employment and he had been recognized for excellent service and salary increased.
34. On re-examination, the witness testified that the Respondent rejected Evercare Group's proposal to consolidate all companies worldwide and E&Y qualified for outsourcing of the Internal Audit function.
35. RWIII, Nancy Mwabili admitted that she wrote and signed the redundancy notice dated 11th November, 2020 and the Claimant was affected by it but no names were identified.



36. That the letter was dispatched by email to the Claimant but not copied to the Labour Officer.
37. That she was unaware of the capability assessment allegedly conducted by E&Y to those in Internal Audit.
38. That she attended the meeting on 10th November, 2020 but did not provide minutes.
39. The witness testified that she received the Claimant's comments in relation to the concerns raised by the forensic investigation and did not respond as it was the Claimant's claims.
40. That the issue of redundancy was discussed on 16th November, 2020 and explained to the Claimant.
41. The witness stated that the Claimant was declared redundant on 9th December, 2020 but the process had commenced earlier and the Claimant had already negotiated to be paid more owing to the duration of service as evidence by his email to Christopher Abeid dated 23rd November, 2020 and he was paid severance pay for 4 years.
42. According to the witness, the Claimant's email of 23rd November, 2020 leaves no doubt that he was aware of the redundancy.
43. It was her testimony that Boards of Directors delegate functions to 3rd parties regularly.
44. That E&Y was to take over effective 1st December, 2020 and the Claimant was accorded one month notice.

Claimant's submissions

45. Counsel submitted on whether the Claimant was unfairly or unlawfully terminated or declared redundant and whether the redundancy was procedurally fair and lawful.
46. On the 1st issue, counsel submitted that based on the occurrences on 9th August, 2020, 10th November, 2020, 11th November, 2020 and 16th October, 2020, the Claimant's employment was unlawfully terminated.
47. As to whether the redundancy was procedurally fair and lawful, counsel submitted that it was not in that the provisions of Section 40 of the [Employment Act](#) were not complied with as all are mandatory as held in *Kenya Airways Ltd V Aviation and Allied Workers Union & 3 others* (2014) eKLR. (See Maraga JA (as he then was) in that there were no consultations, it was a unilateral decision and none with the Labour Officer or on 10th November, 2020 and no minutes of the meeting were availed.
48. Counsel submitted that the Labour Officer was not notified of the redundancy as the letter dated 11th November, 2020 had no signature and the names of the affected persons were not listed for the Respondent to contend that the Claimant was affected.
49. That the decision to dissolve the Respondent's Internal Audit was made by the Evercare Group.
50. Reliance was made on the decisions in *German School Society V Helga Ohany*, *Martin Mwangi V Protocol Solutions Ltd* (2022) eKLR and *Faiza Mayabi V First Community Bank Ltd* (2019) eKLR among others on various aspects of redundancy.
51. Counsel submitted that the Respondent tendered no evidence of the outsourcing of the Internal Audit function and termination of the Claimant's employment was pre-determined as the Respondent was still part of the Evercare Group as per their website.



52. Counsel urged that the Respondent had no valid reason to terminate the Claimant's employment within the meaning of Section 43(1) of the Employment Act, 2007.
53. Counsel prayed for 12 months' salary compensation.

Respondent's submissions

54. Counsel submitted on whether there was a genuine redundancy, procedure and the prayers sought.
55. On the 1st issue, counsel relied on the sentiments of the court in Rop V Unilever Kenya Ltd (2020) eKLR on the concept of redundancy to urge that extracts of minutes show that the decision to outsource Internal Audit was made as early as 28th October, 2020 as reinforced by the minutes of 6th November, 2020 as the Respondent had joined the Evercare Group which had resolved to engage auditors to carry out the function.
56. As to whether lawful procedure was followed, reliance was made on the sentiments of Ndolo J. in Walter Ogal Anuro V Teachers Service Commission (2013) eKLR and Kenya Airways Ltd V Aviation and Allied Workers Union (K) & 2 others (Supra) to isolate the twin test of valid reason and fair procedure to urge that the Respondent had a genuine reason and the provisions of Section 40 of the Employment Act, 2007 were complied as respective notices were issued to the Claimant and Labour Officer, consultations took place as evidenced by email communication between them.
57. As regards the prayers sought, counsel submitted that the prayer for declaration that termination of employment was unfair was unavailable as was the prayer for compensation.
58. On the advertisement of the position of Manager Internal Auditor counsel submitted after the Respondent ceased to be a member of Evercare Group which wound up its operations in Kenya and concomitantly the Respondent was to remunerate E&Y, it could not do so in light of the circumstances and had to revert to the Internal Audit department as a necessary adoption and the Respondent cannot be faulted for the advertisement.
59. Counsel prays for dismissal of the Claimant's case with costs.

Findings and determination

60. After careful consideration of the pleadings, evidence on record and submissions by counsel, the issues for determination are;
 - i. Whether the Claimant was declared redundant or his employment was unlawful and unfairly terminated by the Respondent?
 - ii. Whether the Claimant is entitled to the reliefs sought.
61. As to whether the Claimant's employment was unlawfully terminated by the Respondent or he was declared redundant, it is common ground that the Claimant was declared redundant by the Respondent and was paid and received his dues amounting to Kshs.4,150,898.22 as evidenced by the Final Dues pay slip executed by Jacqueline Kiarie and Nancy Mwabili on 11th December, 2020 and the same deposited in the Claimant's account on 16th December, 2020, a fact the Claimant admitted on cross-examination.
62. The only issue for determination is whether the redundancy was conducted in consonance with the provisions of Section 40 of the Employment Act, 2007 in which case it passes muster failing which it transitions to an unfair termination of employment.



63. As explained by Maraga JA (as he then was) in *Kenya Airways Ltd V Aviation & Allied Workers Union (K) & 2 others (Supra)* among other decisions, redundancy is one of the legitimate ways of terminating an employment relationship at the option of the employer and in circumstances in which the employee is free from blame.
64. It is grounded on commercial imperatives and business interests of the employer in terms of growth and sustainability and may take various forms including re-organization, restructuring, adoption of new technology or downsizing or right sizing of the labour force.
65. Section 2 of the *Employment Act*, 2007 defines redundancy as;
- “The loss of employment, occupation, job or career by involuntary means through no fault of an employee involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation or loss of employment.”
66. A redundancy culminates in a separation.
67. Similarly, as explained in *Rop V Unilever Kenya Ltd (2023)*, redundancy is not an event but a process that has a beginning and an end, typically characterised by discussions by the top organs of an organization until a decision is arrived at and other processes complied with.
68. For a redundancy to pass muster, it must be demonstrated that the employer had a substantive justification to undertake the process and conducted it in accordance with the provisions of Section 40 of the *Employment Act*, 2007.
69. In sum, the process must pass the fairness test under Section 45 of the *Employment Act*, 2007.
70. Section 40 of the *Employment Act* itemises the seven (7) conditions a redundancy must meet to pass muster.
71. In *Freight in Times Ltd V Rosebell Wambui Munene (2018) eKLR*, the Court of Appeal emphasized that the conditions prescribed by Section 40 of the Act are mandatory as follows;
- “In addition, Section 40(1) of the *Employment Act* prohibits, in mandatory tone the termination of a contract of service on account of redundancy unless the employer complies with the following seven conditions, namely; . . .”
72. The conditions include, notice to the Labour and the union or the employee, if not a member of the union setting out the reasons for and extent of the redundancy at least one (1) months before the effective date of redundancy, selection criteria, fairness, whether an employee is a member of the union or not, payment of any leave due in cash, one month notice or pay in lieu of notice and severance pay at the rate of not less than 15 days for each completed years of service.
73. As regards notice, the Claimant admitted that he received the Respondent’s Notice of Intent to Declare Redundancy dated 11th November, 2020.
74. The notice stated that the Respondent had made a strategic decision to outsource all the roles performed by the Internal Audit function at the Respondent and 4 individuals employed in the department would be affected by the redundancy.
75. Counsel for the Claimant faults the notice on the premise that it does not identify the four individual employees by name and the Respondent could not therefore claim that the Claimant was among them.



76. Section 40(1)(a) of the *Employment Act*, 2007 requires the reason for the redundancy and extent of the redundancy. Does the term “extent” encompass names of the affected employees?
77. The term literally signifies the scope, scale, size or magnitude of the redundancy. The extent would include the departments affected and the number of employees affected. Does the term include the name of the employees affected? The court is not so persuaded for the simple reason that once the employer discloses the department(s) and sections and the total number of employees affected, it gives the union and the Labour Officer a very clear picture of the magnitude of the redundancy and arguably its impact on the labour force.
78. Were the names necessary in this case?
79. The letter is unambiguous that the Respondent had decided to outsource “all the roles performed by the entire Internal Audit department and all the positions in the department would be declared redundant and they were 4 employees in post in the department.
80. It requires no gainsaying that the Claimant was the Head of the Department and was among the 4 individuals affected.
81. The notice was also faulted on the premise that the copy sent to the Labour Officer had no acknowledgement signature.
82. The copy on record has the stamp of the Labour Officer, Nairobi and a date, 13th November, 2020.
83. Counsel urges that the absence of a signature discounts the suggestion that it was served on the Labour Officer.
84. The Respondent’s witness admitted that indeed the letter had no signature.
85. Plainly, a signature authenticates a documents, stamp or seal. It is evidence that the receiver did in fact receive the document. The signature binds the person receiving the document.
86. In the court’s view, the stamp and date are insufficient as the alleged receiving of the documents lacks the authenticator and thus fails the test of authentication.
87. The Respondent had no explanation as to why the receiver, if any, did not sign on or against the stamp.
88. The court is inclined to agree with the Claimant’s counsel that the notice of redundancy was not served on the Labour Officer as obligated by Section 40(1)(b) of the *Employment Act*, 2007.
89. Even assuming that the notice was given to the Labour Officer as alleged by the Respondent, it would still have been ineffectual on account of the duration as it was delivered to the Labour Officer on 13th November, 2020 and the effective date of redundancy was 9th December, 2020.
90. Section 40(1)(a) insists on “not less than one (1) month prior to the date of termination on account of redundancy” and a similar duration applies under Section 40(1)(b) as held in *Thomas De La Rue (K) Ltd V David Opondo Omutelema* (2013) eKLR. 13th November to 9th December, 2020 was less than one (1) month.
91. In a nutshell, the notice of redundancy was ineffectual.
92. Secondly, counsel for the Claimant faults the redundancy for account of lack of consultations. That there were no consultations with the Claimant after the notice of redundancy and with the Labour Officer.



93. Although the provisions of Section 40(1) do not expressly require consultations in a redundancy, it has been domesticated from the ILO Convention No. 158 – Termination of Employment Convention, 1982 by virtue of Article 2(6) of *the Constitution* of Kenya, 2010 and Article 41 of *the Constitution* of Kenya, 2010. (See Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 2 others (Supra) (per Maraga J.A. (as he then was) and Cargill Kenya Ltd V Caroline Mutana Mwaka (2021) KECA 115.
94. Strangely, the Claimant’s Memorandum of Claim makes no reference to the lawfulness or otherwise of the redundancy process. It makes no allegation that the provisions of Section 40(1) of the *Employment Act*, 2007 were not complied with.
95. RWII, Nancy Mwabili testified on cross-examination that on 16th November, 2020, the issue of redundancy was discussed and the entire process was explained to the Claimant but minutes were not filed.
96. More significantly, by an email dated 23rd November, 2020 at 2.24 pm, the Claimant requested the Respondent’s CEO, Mr. Christopher Abeid to review severance pay from the rate of 15 days for every completed year to 60 days for 4 years of service on account of the Claimant’s capacity to deliver an important function, costs of the outsourcing and the number of years served although he had not served for 4 years.
97. By email dated 11th December, 2020, the Respondent’s CEO confirmed that he had received approval to pay 60 days for the 4 years and the Claimant was paid accordingly.
98. Although the Claimant denied that there was a consultative meeting on 16th November, 2020 or at any other time, RWII confirmed that there was but minutes were not filed.
99. The foregoing evidence of a meeting is corroborated by the Claimant’s email to the Respondent’s CEO dated 23rd November, 2020 where the Claimant states that;

“ . . . and in the meeting held to communicate the boards decision to outsource the internal audit function, it is very clear that the very important internal job exists but the decision to outsource was greatly organization need driven and did not reflect on individual capacity . . . ”
100. Similarly, the contents of the Notice of Intent to declare redundancy dated 11th November, 2020 which the Claimant did not contest make reference to a briefing with staff in the Internal Audit department on 10th November, 2020 and the discussion on the outsourcing of all roles performed by the Internal Audit function and its impact on their employment.
101. From the email communication on record and the evidence availed in court, the court is satisfied that consultations took place and the Respondent was ready and willing to engage the Claimant on the issue having acceded to his requisite to serve the notice period away from the office.
102. Finally, as regards the reason for the redundancy, evidence on record reveals that at the time, the Respondent was a member of the Evercare Group which had invested in the Respondent.
103. The Claimant admitted that owing to undisclosed challenges, the Respondent was suspended by the NHIF and the suspension was extended in July 2020.
104. He also disclosed that the Forensic Audit Investigation he was requested to respond to was conducted in early or mid 2020 and it led to the separation of the Respondent and its CEO and taking over of the Respondent.



105. A cursory glance at the copies of emails produced by the Claimant reveals that Evercare Group had on-boarded Ernest & Young before the outsourcing of the internal audit function and the issue was deliberated upon at a meeting of the Audit Risk and Compliance Committee of the Respondent's board of directors on 28th October, 2020 and a decision made.
106. The extract of the minutes on record leave no doubt that the proposal to outsource the internal audit function came from Evercare Kenya Health Ltd and each member of the group bore part of the costs of the outsourced function as reported at the meeting.
107. It is also decipherable that the proposal of outsourcing affected shared services only and email records would appear to suggest that the Claimant was fully aware of the discussions and the notification of redundancy dated 11th November, 2020 does not appear to have surprised him if his email on 23rd November, 2020 is anything to go by.
108. In its Notice of Intent to declare redundancy to the Claimant dated 11th November, 2020, the Respondent is explicit that the organization had made a strategic decision to outsource all the roles performed by the internal audit function whose consequence was to render all the positions in the department redundant.
109. In *Wringley Company (East Africa) Ltd V Attorney General & 2 others* (2013) eKLR, a three judge bench (Nduma, Ndolo and Nzioki Wa Makau JJ) defined the parameters for a credible outsourcing as follows;
- a. "Ordinarily employers are not expected to outsource their core functions;
 - b. An employer will not be permitted to use outsourcing as a means to escape from meeting accrued contractual obligations to its employees;
 - c. An employer is not permitted to transfer the services of its employee to an outsourcing agency without the express acceptance of each affected employee and in all such cases the employer must settle all outsourcing obligations to its employees before any outsourcing arrangement takes effect; and
 - d. Outsourcing is unlawful if its effect is to introduce discrimination between employees doing equal work in an enterprise."
110. The court did not outlaw outsourcing of a service by an employer or as a method of separation between an employer and an employee and it is an accepted business concept as a form of corporate operational re-organization.
111. (See *Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 2 others* (Supra), *Tailor & Textiles Workers Union V Chemunda Spin Ltd & 2 others* (2019) eKLR) for the proposition that outsourcing enables an organization to concentrate on its core functions, reduce costs and enhance operational efficiency).
112. From the evidence on record, it is evident that the Respondent's board resolved to outsource the internal audit function to E&Y.
113. In the court's view, the Respondent has demonstrated that it had a valid and fair reason to declare the Claimant's position redundant in December 2020.
114. From the foregoing analysis, it is decipherable that although the Respondent endeavoured to comply with the provisions of Section 40(1) of the *Employment Act*, 2010, its efforts did not meet the threshold as it adduced no credible evidence to demonstrate that the notice of redundancy was served upon and



received by the Labour Officer within the duration prescribed by law. It therefore follows that the notice of redundancy was ineffectual rendering the purported redundancy an unfair termination of employment within the meaning of Section 45 of the *Employment Act*, 2007.

115. As to whether the Respondent terminated the Claimant's employment unlawfully, outside the redundancy, as alleged by the Claimant, the Claimant tendered no credible evidence to establish the allegation.
116. First, the allegation that a director of the Respondent had ones quipped as to who the new Head of Internal Audit was on 9th August, 2020 lacked context underpinning and the Claimant tendered no evidence as to what had transpired at that meeting before and after the comment.
117. Second, the allegation that the Respondent gave the Claimant a verbal notice to show cause was not supported by any facts as the Claimant's response to the forensic audit investigation Report's concerns on 13th November, 2020 had been pending for sometime and on 10th November, 2020, the CEO merely requested the Claimant to respond to the allegations as evidenced by the Claimant's email dated 13th November, 2020.
118. Similarly, the statements are articulated in general terms and implicate the internal audit department, not the Claimant personally and he admitted that he responded to them broadly.
119. Were the two statements allegations of wrong doing by the Claimant?
120. The findings only required the Claimant to give an explanation as to why his department had not ensured that there were proper controls and processes and failed to flag issues on various occasions.
121. In the court's view, to argue that the two issues raised by the forensic investigation report constituted a notice to show cause or the genesis of a disciplinary would be to overstretch imagination.
122. Finally, the court did not find any credible evidence to suggest that the capability assessment conducted by E&Y was part of the Respondent's scheme to terminate the Claimant's employment. In any case, the same was conducted after the notice of redundancy.
123. But more significantly, the Claimant's email dated 23rd November, 2020 leaves no doubt that the Claimant's employment was not terminated by the Respondent on account of want of capacity to deliver and CWI confirmed as much in his own words that;

“ This means that the team possesses the requisite knowledge, experience and qualifications to deliver”.
124. In a nutshell, the allegation that the decision to terminate the Claimant's employment was pre-determined was not borne by evidence.
125. Section 47(5) of the *Employment Act*, 2007 provides that;

“ For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”
126. From the foregoing analysis, it is the finding of the court that the Claimant failed to discharge the burden of proof.



Reliefs

127. Having found that termination of the Claimant's employment by the Respondent on account of redundancy was unfair for want of procedural propriety as the notice was ineffectual, the court is satisfied that the Claimant qualifies for certain reliefs.
- a. Declaration
128. Having found as above, a declaration that termination of the Claimant's employment by the Respondent was unfair and unlawful within the meaning of Section 45 of the Employment Act, 2007 is merited.
- b. 12 months compensation
129. In determining the quantum of compensation, the court has taken the following into consideration;
- i. The Claimant did not contribute to the termination of employment.
 - ii. The Claimant had no record of misconduct or performance concerns and had been accoladed by the employer and given salary increments over time.
 - iii. The Claimant was an employee of the Respondent for about 4 years which is short.
 - iv. The Claimant did not express his wish to continue in the Respondent's employment or appeal the decision of redundancy or object to it.
 - v. The Claimant negotiated enhance severance pay for 4 years in lieu of the 3 completed years he had served.
 - vi. The Claimant was paid all his dues under the redundancy and admitted as much in court.
130. In the circumstances, the court is satisfied that the equivalent of one (1) month's salary is fair, Kshs.529,100.00.
- c. Certificate of service
131. The Claimant is entitled to a certificate of service by dint of Section 51 of the Employment Act, 2007.
132. In conclusion, judgment is entered in favour of the Claimant against the Respondent as follows;
- a. Declaration that termination of employment on account of redundancy was unfair.
 - b. Equivalent of one (1) month's salary, Kshs.529,100/=.
 - c. Certificate of service.
 - d. Costs of the suit.
 - e. Interest at court rates from date of judgment till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27TH DAY OF FEBRUARY 2024

DR. JACOB GAKERI

JUDGE

Order



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

