



REPUBLIC OF KENYA



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**Ngaira & 126 others v Sendwave Limited (ZEPZ) (Cause E532 of 2023)
[2024] KEELRC 567 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 567 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E532 OF 2023
L NDOLO, J
MARCH 14, 2024**

BETWEEN

ABRAHAM LEON NGAIRA 1ST CLAIMANT
IRENE DIMMO 2ND CLAIMANT
BELINDA OLISA MASHETI 3RD CLAIMANT
DORAH KICHUNJU 4TH CLAIMANT
BERTHA MUSAZI 5TH CLAIMANT
REBBECA KARANJA 6TH CLAIMANT
DAISY ACHIENG MBOYA 7TH CLAIMANT
ANNE OLUOCH 8TH CLAIMANT
CAROLINE MORAA MAUTI GEORGE 9TH CLAIMANT
IRENE ZALE 10TH CLAIMANT
BETTY WAIRIMU MAINA 11TH CLAIMANT
TRIZER TAAKA 12TH CLAIMANT
MAUREEN OBURE 13TH CLAIMANT
FRIDAH MUGAMBI 14TH CLAIMANT
FIONA MUTHONI 15TH CLAIMANT
GERALD WERE DIFFU 16TH CLAIMANT
STEPHEN OCHIENG ODHIAMBO 17TH CLAIMANT
DEBORAH MUTHEU MUTUNGA 18TH CLAIMANT
ESTHER GITHAE 19TH CLAIMANT



RACHAEL OLUOCH	20 TH CLAIMANT
BIANCA NYAMBURA	21 ST CLAIMANT
PHENEY MWIMWA	22 ND CLAIMANT
MICHELLE OWILI	23 RD CLAIMANT
STELLAH WANJOHI	24 TH CLAIMANT
DONELLA LANGAT	25 TH CLAIMANT
JOYCE WAMBUI NJUBI	26 TH CLAIMANT
DAVID CHWEYA	27 TH CLAIMANT
MOREEN CHILO	28 TH CLAIMANT
BRENDA ANYANGO MIDAMBA	29 TH CLAIMANT
PURITY NGETICH	30 TH CLAIMANT
JOSEPHINE OMONDI	31 ST CLAIMANT
IAN MWANGI DUNCAN	32 ND CLAIMANT
FAITH CHELANGAT	33 RD CLAIMANT
ESTHER GATHONI MAINA	34 TH CLAIMANT
BANCY NYAKIO NJIRU	35 TH CLAIMANT
YVONNE OCHIENG	36 TH CLAIMANT
EVA MAKENA MUTEA	37 TH CLAIMANT
JOYCE MUSAU	38 TH CLAIMANT
SELESTINE AKELO	39 TH CLAIMANT
JOSEPHINE FLORA ATIENO OKENO	40 TH CLAIMANT
LUCY WAMBUI	41 ST CLAIMANT
FELICITY NDUATA KAMWANGA	42 ND CLAIMANT
WINNIE WANJIKU WACHIRA	43 RD CLAIMANT
JANNAT JUMA	44 TH CLAIMANT
JOSECK MOMANYI	45 TH CLAIMANT
CAREN SHANICE GUMBA	46 TH CLAIMANT
RHODA MUKOLWE	47 TH CLAIMANT
STEPHEN KARIUKI	48 TH CLAIMANT
COREEN NAMWANZO GONZO	49 TH CLAIMANT
GERALDINE KOKI	50 TH CLAIMANT
GRACE WARIARA MUHOYA	51 ST CLAIMANT



KEBASO MARAGIA	52 ND CLAIMANT
IRENE EKIRAPA	53 RD CLAIMANT
KELVIN MUTHOKA	54 TH CLAIMANT
ISHMAEL MWAI	55 TH CLAIMANT
FRANCIS MBITHI	56 TH CLAIMANT
IRENE AWUOR OTULA	57 TH CLAIMANT
SHARON ALUVISA	58 TH CLAIMANT
CAROLINE WAMBUI NJOROGE	59 TH CLAIMANT
JOYCE MBUGUA	60 TH CLAIMANT
DAVID KURIA MWANGI	61 ST CLAIMANT
FLAVIANE MUTURI	62 ND CLAIMANT
JEMIMAH MUROKI	63 RD CLAIMANT
JOHNSTONE MUTHEE	64 TH CLAIMANT
JAMES OBINGO	65 TH CLAIMANT
CAROLINE NYOKABI KARIUKI	66 TH CLAIMANT
MERCY ALUSA	67 TH CLAIMANT
JANEFFA MAREMBA MWAKALE	68 TH CLAIMANT
DAMARIS OLUOCH	69 TH CLAIMANT
HELLEN MALAGO	70 TH CLAIMANT
EVERLYNE AKOTH OTIENO	71 ST CLAIMANT
SAIDA YUSUF	72 ND CLAIMANT
LUCY MOBAGI	73 RD CLAIMANT
LEONIDA NGETICH	74 TH CLAIMANT
JOSEPH GICHUHI	75 TH CLAIMANT
SALLY KOROSS	76 TH CLAIMANT
NASEEM MUKANDA	77 TH CLAIMANT
PERIS LUTA	78 TH CLAIMANT
GLADYS CHEROTICH RONO	79 TH CLAIMANT
DIANA IRERI	80 TH CLAIMANT
BILHA MUTHONI MBAIRE	81 ST CLAIMANT
ANDRE ETABALE WETINDI	82 ND CLAIMANT
MOSES KIBET	83 RD CLAIMANT



ELIZABETH ODHIAMBO	84 TH CLAIMANT
JERRY OTIENO	85 TH CLAIMANT
ANN MUTHENGI	86 TH CLAIMANT
DIANA KERUBO ORWARU	87 TH CLAIMANT
MERCY OLOO	88 TH CLAIMANT
RUTH MITA	89 TH CLAIMANT
JACKLYNE MUTHEE	90 TH CLAIMANT
MARK KHAEMBA	91 ST CLAIMANT
SAMANTHA KIMANI	92 ND CLAIMANT
SHARON ONONO	93 RD CLAIMANT
SIMON KIMANI CHEGE	94 TH CLAIMANT
NICHOLAS MUTHONI	95 TH CLAIMANT
STELLAH WAMAITHA	96 TH CLAIMANT
IRENE MUIYURO	97 TH CLAIMANT
LYDIA DANDA	98 TH CLAIMANT
LUCY KALUNGU	99 TH CLAIMANT
GRACE MUIRURI	100 TH CLAIMANT
MERCY CHEGE WAMBUI	101 ST CLAIMANT
RALPH MSHENGA	102 ND CLAIMANT
VERONICA OKOTH	103 RD CLAIMANT
CATHERINE KARANJA	104 TH CLAIMANT
MARY-EDNA ACHIENG OBALLA	105 TH CLAIMANT
ANNASTACIA NDUNGE NZUKI	106 TH CLAIMANT
FAITH NGALA	107 TH CLAIMANT
YVONNE KIRAGU	108 TH CLAIMANT
ELIZABETH SAXTON	109 TH CLAIMANT
LILIAN OTIENO	110 TH CLAIMANT
CHRISTINE NYIBORI ARUKA	111 TH CLAIMANT
ROSEMARY CHEGE	112 TH CLAIMANT
SHEILA SAIDIMU	113 TH CLAIMANT
ANTONY BUYEKA	114 TH CLAIMANT
GRACE OMARI	115 TH CLAIMANT



MIRIAM NYAMBURA MURIITHI	116 TH CLAIMANT
RITA ODUNDO	117 TH CLAIMANT
GRACE WANJIKU KAGWE	118 TH CLAIMANT
NZAKWA VENESSA	119 TH CLAIMANT
CALVINCE ONYANGO	120 TH CLAIMANT
MILLICENT KILONZO	121 ST CLAIMANT
JOSEPH MUTUI	122 ND CLAIMANT
DERRICK MUNENE	123 RD CLAIMANT
SYLVIA WANJIKU WAWERU	124 TH CLAIMANT
HILLARY ROTICH	125 TH CLAIMANT
WINNIE NJERI NJOROGE	126 TH CLAIMANT
KEVIN WACHIRA	127 TH CLAIMANT

AND

SENDWAVE LIMITED (ZEPZ)	RESPONDENT
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JUDGMENT

1. On 7th July 2023, the Claimants filed a Memorandum of Claim dated 6th July 2023, alleging unlawful and unfair termination of employment by way of redundancy. Alongside the claim, the Claimants filed a Notice of Motion under Certificate of Urgency, which was later withdrawn to pave way for disposal of the main claim.
2. The Respondent filed a Response dated 22nd September 2023, to which the Claimants responded on 24th October 2023.
3. By consent of the parties, the claim was urged by way of pleadings, supporting documents and final submissions.

The Claimants' Case

4. The Claimants state that they were employed by the Respondent on diverse dates between 2021 and 2022. They add that they were employed in various positions within a remote working arrangement where they would work from home.
5. The Claimants aver that after working for a few months, they learnt that the Respondent Company had been acquired by another company known as WorldRemit.
6. The Claimants further aver that they were invited to town hall meetings by the Respondent's senior officials, where they were assured that there was nothing to worry about, as the Respondent was simply undertaking a restructuring process to integrate the new company.
7. The Claimants claim that subsequently, 95% of the Respondent's managers and many Kenyan employees were dismissed from employment.



8. They further claim that after the merger between Sendwave and WorlRemit to create ZEPZ, the work environment became hostile and eventually, the Respondent announced a redundancy.
9. On 16th May 2023, the Respondent called for a town hall meeting, after which the Claimants were locked out of the work portal and email access. On 17th May 2023, the Claimants received a letter addressed to the Ministry of Labour under reference ‘Notification of end of Employment by reason of Redundancy’. On 19th June 2023, the Claimants received letters via DocuSign under reference ‘Confirmation of End of Employment by reason of Redundancy’.
10. The Claimants accuse the Respondent of targeting the Kenyan team on account of stringent labour laws and an informed workforce. They state that the Respondent did not involve them in the redundancy process. They claim that after the termination of their employment, the Respondent conducted massive recruitment.
11. The Claimants’ case is that there was no genuine case of redundancy and that the Respondent mismanaged the process to the Claimants’ detriment. They assert that the entire process of redundancy was marred with lack of procedural fairness and consultation, high handedness, discrimination and unfair labour practices. They point out that the tabulation of their terminal dues was erroneous.
12. The Claimants further fault the Respondent for failing to pay them house allowance contrary to the provisions of Section 31(1) of the [Employment Act](#).
13. The Claimants seek the following reliefs:
 - a. A declaration that the decision to terminate the Claimants’ employment on account of redundancy was unlawful and unfair;
 - b. A declaration that the decision to terminate the employment of the 20th, 30th, 31st, 34th, 39th, 50th, 74th, 79th, 88th, 116th, 117th and 119th Claimants, while they were lawfully on maternity leave was wrongful, unfair and discriminatory;
 - c. House allowance for 7 months (December 2022 to June 2023);
 - d. 3 months’ pay in lieu of notice;
 - e. 12 months’ salary in compensation for unfair redundancy;
 - f. Severance pay @ 15 days’ pay for each completed year of service;
 - g. Bonuses equivalent to 12 months’ salary;
 - h. Kshs. 5,000,000 each for the 20th, 30th, 31st, 34th, 39th, 50th, 74th, 79th, 88th, 116th, 117th and 119th Claimants as compensation for termination of employment on the ground of pregnancy;
 - i. Kshs. 5,000,000 to each Claimant terminated while on paternity leave as compensation for discrimination;
 - j. Payment for any outstanding leave days and holiday allowance.

The Respondent’s Case

14. In its Response dated 22nd September 2023, the Respondent states that it offers front-end and back-end office support to the broader Sendwave Company, which provides an international money transfer service for remittance of money from the United States of America and Europe to Africa, Asia and the Americas.



15. The Respondent admits having employed the Claimants in various capacities on diverse dates in the years 2021 and 2022. The Respondent further admits that an integration took place between Sendwave and WorldRemit in 2022 and into 2023. The Respondent states that the acquisition of Sendwave by WorldRemit was completed on 12th February 2021.
16. The Respondent denies the Claimants' allegation that their terms and conditions of employment were downgraded and points out that the Claimants did not raise any such complaint prior to the subject redundancy.
17. Regarding the redundancy, the Respondent states that it was forced to relook its business operation and to conduct a rigorous restructuring process and was forced to declare some positions redundant. The Respondent states that the restructuring was meant to increase efficiency in line with market changes and to optimise the use of technology.
18. According to the Respondent, the optimisation of the use technology meant that certain positions, such as the customer care representative position was taken up by technology through automation and software.
19. The Respondent adds that the restructuring was also meant to increase its efficiency in line with market changes. This, the Respondent states, forced reallocation, redirection and refocus of workforce in other jurisdictions, hence the recruitment in other jurisdictions alluded to by the Claimants.
20. The Respondent claims to have employed a fair selection process for the redundancy. The Respondent adds that the Claimants were duly notified on the impending redundancy both orally and through written communication. In this regard, the Respondent states that it issued three notices, with the first two resulting in consultation on various issues, including outstanding house allowances, which were fully paid.
21. The Respondent avers that each Claimant was paid the following:
 - a. Pending house allowance until 19th June 2023;
 - b. Severance pay;
 - c. Vested restructured share units;
 - d. One month's salary in lieu of notice; and
 - e. Outstanding accrued holidays until termination.

Findings and Determination

22. From the evidence on record, the Claimants left the Respondent's employment on account of redundancy.
23. Section 2 of the [Employment Act](#) and the corresponding Section in the [Labour Relations Act](#) define redundancy as:

“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”



24. While the law recognises redundancy as a legitimate mode of termination of employment, Section 40 of the *Employment Act* sets the following mandatory conditions to be met by every employer declaring redundancy:
- (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
 - (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
 - (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
 - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
 - (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
 - (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
 - (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.
25. The first 2 conditions under Section 40 require every employer declaring redundancy to issue a one-month notice of intention to the affected employee, their union (where applicable) and the local Labour Officer. By definition, this notice, should set out the reasons for and the extent of the intended redundancy.
26. It is now settled in case law that the redundancy notice under (a) and (b) above is separate and distinct from the termination notice provided under (f), which may be paid off in cash.
27. In *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR the Court of Appeal stated as follows:

“It is quite clear to us that sections 40 (a) and 40 (b) provide for two different kinds of redundancy notifications depending on whether the employee is or is not a member of a trade union. Where the employee is a member of a union, the notification is to the union and the local labour officer at least one month before the effective redundancy date. Where the employee is not a member of the union, the notification must be in writing and to the employee and the local labour officer. Section 40 (b) does not stipulate the notice period as is the case in 40 (a), but in our view, a purposive reading and interpretation of the statute would mean the same notice period is required in both situations. We do not see any rational reason why the employee who is not a member of a union should be entitled to a shorter notice.”



28. In the subsequent decision in *Kenya Airways Limited v Aviation & Allied Workers Union of Kenya & 3 others* [2014] eKLR Maraga JA (as he then was) stated thus:
- “The notices under this provision are not merely for information. The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in...ILO Convention No. 158-Termination of Employment Convention, 1982, is to give the parties an opportunity to consider ‘measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.’ The consultations are therefore meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable.”
29. In the more recent decision in *The German School Society & another v Ohany & another* (Civil Appeal 325 & 342 of 2018 (Consolidated)) [2023] KECA 894 (24 July 2023) (Judgment) the Court of Appeal held that the requirement for consultation is implied in Section 40 of the *Employment Act* and stated that:
- “In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”
30. In their written submissions dated 11th December 2023, the Claimants referred to the decision in *Bernard Misawo Obora v Coca Cola Juices Kenya Limited* [2015] eKLR where it was held that the notices under Section 40 of the *Employment Act* are not to be issued mechanically for the sake of ticking the boxes.
31. According to the Respondent’s own narration of the events leading to the termination of the Claimants’ employment, a town hall meeting was held on 16th May 2023 after which redundancy notices were dispatched to the Claimants and the respective Labour Officers. Termination notices were subsequently issued on 19th June 2023.
32. There was however no evidence of any consultations held with the affected employees. More significantly, the Claimants stated that after the town hall meeting of 16th May 2023, they were locked out of the work portal and email access. The only inference to draw from the Respondent’s action in this regard is that by the time the town hall meeting was being convened, the Claimants had already been selected for redundancy and there was no room for mitigation.
33. I therefore find and hold that the communication to the Claimants regarding the impending redundancy did not qualify as a redundancy notice as defined in law.
34. Regarding the condition on selection criteria as required under Section 40(1)(c) of the *Employment Act*, the Respondent states that the subject redundancy affected the entire class of employees. This being a mass redundancy, the Court found no reason to fault the Respondent on this score.
35. There is evidence that the Claimants were paid their terminal dues and the claim for underpayment under this head was not proved.
36. Similarly, the claim for discrimination against some of the Claimants was not proved.
37. Ultimately, the only finding I make in favour of the Claimants is that they were not issued with a proper redundancy notice and for this reason, I award each Claimant the equivalent of one (1) month’s salary



in compensation. The amount payable to each Claimant will be tabulated jointly by Counsel for the parties and paid to the Claimants within the next thirty (30) days from the date of this judgment.

38. The Claimants will have the costs of the case.

39. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF MARCH 2024

LINNET NDOLO

JUDGE

Appearance

Mr. Wangila for the Claimants

**Mr. Wesonga for the Respondent

