



REPUBLIC OF KENYA



**Macharia & 18 others v Scripture Union of Kenya (Cause 355 of 2017)
[2024] KEELRC 13599 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13599 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 355 OF 2017
DN NDERITU, J
DECEMBER 19, 2024**

BETWEEN

**ANTHONY KIMOTHO MACHARIA 1ST CLAIMANT
LAMECH KIPRONO LIMO 2ND CLAIMANT
MICHAEL ONYANGO AWINO 3RD CLAIMANT
JOSEPHAT N. BONUKE 4TH CLAIMANT
JAMES KUBOKA 5TH CLAIMANT
GRACE MARTHA MUTHUI 6TH CLAIMANT
ISAAC OCHIENG 7TH CLAIMANT
GIDEON MUTURI WAMUGUNDA 8TH CLAIMANT
WALTER MWANYUMBA 9TH CLAIMANT
MIMI DAMAH OTIS MZERERAH 10TH CLAIMANT
EUNICE NYAKIO 11TH CLAIMANT
GLADYS MWIHAKI WAINAINA 12TH CLAIMANT
AMOS KIPROTICH LIMO 13TH CLAIMANT
KIPKEMOI NG'ENO 14TH CLAIMANT
CHRISTINE NALIAKA WANGWA 15TH CLAIMANT
JOCKIM WANDERA OMANYO 16TH CLAIMANT
KENNEDY GACHWE WAMBUI 17TH CLAIMANT
ROSELYNE KNIGHT OMONDI 18TH CLAIMANT
DAVID MWEBI ANGWENYI 19TH CLAIMANT**



AND

SCRIPTURE UNION OF KENYA RESPONDENT

JUDGMENT

I. Introduction

1. In a memorandum of claim dated 17th July, 2017 filed through Wambeyi Makomere & Co. Advocates the claimants pray for –
 - a. A temporary and thereafter a permanent injunction do issue restraining the respondent by themselves, their servants and or agents from enforcing the restructuring process as illustrated in the letter dated 13th June and 28th June, 2017 by the national director. (Spent)
 - b. A declaration that the purported and or alleged restructuring process by the respondent management is illegal, unconstitutional, express violation of the laid down labour and relations, well known practice, non-starter and void abinitio. (Spent)
 - c. A temporary and thereafter a permanent injunction restraining the respondent by themselves their servants or agents from victimizing, intimidating, terminating and or acting/behaving in any manner whatsoever to affect the day-to-day duties of the claimants at their respective work station and or infringe their rights of enjoyment fair labour practices. (Spent)
 - d. In the alternative and without prejudice to the prayers (1), (2) and (3) above and in view of the intended closure of Kisumu, Nyeri, and Mombasa branches and the alleged restructuring process which is to and or affect all the claimants, the court do order that –
 - i. Three months' gross wages in lieu of notice
 - ii. Leave
 - iii. Sacco contributions
 - iv. Provident fund
 - v. Gratuity
 - vi. Compensation
 - vii. Costs
 - e. Any other reliefs which the Honourable Court may deem fit to award.
2. Alongside the memorandum of claim were filed verifying affidavits by the 3rd & 6th claimants, a list of witnesses, the claimants' written statements, the claimants' authority to sign to the 1st to 7th claimants, a list of documents, and a bundle of copies of the listed documents, all in support of the claim.
3. On 18th September, 2017 the claimants filed the 'claimants' computation of dues', a further list of documents, and copies of the listed documents. The claimants' computation of dues was broken down as follows –
 - i. Anthony Kimotho Macharia (1st claimant) - Branch manager(Nyeri)



Three months' gross wages in lieu of notice (Kshs.37,422/= x 3).....
.....Kshs37,422/=

Sacco contributionsKshs148,925/=

Gratuity for 10 years (Kshs.37,422/= x 10/2)...Kshs187,110/=

Compensation (Kshs.37,422/= x 12).....Kshs449,064

Kshs822,521/=

Less Sacco loan balance.....Kshs319,256/=

Total =Kshs.503,265/=

ii. Lamech Kiprono (2nd claimant) - Branch manager (Eldoret)

Three months' gross wages instead of notice (basic pay Kshs29,768 + Kshs 13,000(house allowance) =Kshs.42,768/= x 3).....Kshs128,304/=

Leave for 21 days(Kshs29,798*21/30).....Kshs20,837.60

Gratuity for 3 years(Kshs42,768 *3/2)Kshs187,110/=

Compensation=Kshs.42,768/= x 12Kshs513,216/=

Total =Kshs.726,509.60

iii. Michael Onyango Awino (3rd claimant) - Branch manager (Nakuru)

Three months' gross wages instead of notice (basic pay Kshs24,650+ Kshs 10,000(house allowance) =Kshs.34,650/= x 3).....Kshs34,650/(sic)

Gratuity for 9 years(kshs34,650*9/2)Kshs155,925/=

Sacco contribution.....Kshs88,555/=

Leave for 2017(21 days)(23,520 x 21/30).....Kshs16,464/=

Compensation=Kshs.34,650/= x 12Kshs415,800/=

Total =Kshs.711,394/=

iv. Josephat N. Bonuke (3rd claimant) - Branch Manager (Mombasa)

Three months' gross wages instead of notice (basic pay Kshs24,650+ Kshs 10,000(house allowance) =Kshs.34,650/= x 3).....Kshs103,950/=

Gratuity for 9 years (Kshs34,650*9/2)Kshs155,925/=

Sacco contribution.....Kshs177,474/=

Compensation=Kshs.34,650/= x 12Kshs415,800/=

Sub-Total =Kshs.711,394/=

Less Sacco loan.....Kshs209, 196/=

Total=681,208/=

v. James Kuboka (5th claimant) – Accountant (Nairobi HQ)

Three months' gross wages instead of notice (basic pay Kshs38,044/=+ Kshs16,000/= (house allowance) =Kshs.54,044/= x 3).....Kshs162,132/=



Gratuity for 3 years(kshs54,044/= *3/2).....Kshs81,066/=

Sacco contribution.....Kshs140,341/=

Leave for 2016/2017(21 days) (38,044/= x 21x 2/30).....Kshs53,261.60

Compensation=Kshs.54,044/= x 12Kshs648,528/=

Sub-Total =Kshs.1,085,328/=

Less Sacco loan balance.....239,438

Total= Kshs845,890/=

vi. Grace Martha Muthui (6th Claimant) – Branch Manager (Nairobi)

Three months' gross wages instead of notice (basic pay Kshs26,422/=+ Kshs 11,000/=(house allowance) =Kshs.37,422/= x 3).....Kshs112,266/=

Gratuity for 12 years(kshs37,422/= *12/2).....Kshs224,532/=

Sacco contribution.....Kshs272,355/=

Leave for 2015/2016/2017(21 days)

(26,422/= x 21x 3/30).....Kshs55,486.20

Compensation=Kshs.37,422/= x 12Kshs449,064/=

Sub-Total =Kshs.1,085,328/=

Less Sacco loan balance.....Kshs537,428/=

Total= Kshs576,275.20/=

vii. Isaac Ochieng (7th Claimant) – Branch Manager (Kisumu)

Three months' gross wages instead of notice (basic pay Kshs18,500/=+ Kshs 5,000/=(house allowance) =Kshs.23,500/= x 3).....Kshs70,500/=

Gratuity for 1 year(kshs23,500/= *1/2).....Kshs11,750/=

Compensation=Kshs.23,500/= x 12Kshs282,000/=

Total= Kshs364,250/=

viii. Gideon Muturi Wamugunda (8th Claimant) – sales assistant (Nakuru)

Three months' gross wages instead of notice (basic pay Kshs10,000/=+ Kshs 5,000/=(house allowance) =Kshs15,000/= x 3).....Kshs45,000/=

Gratuity for 12 years(kshs15,000/= *2/2).....Kshs15,000/=

Compensation=Kshs15,000/= x 12Kshs180,000/=

Total= Kshs240,000/=

ix. Walter Mwanyumba (9th Claimant) – Sales Assistant (Mombasa)

Three months' gross wages instead of notice (basic pay Kshs14,160/=+ Kshs 6,000/=(house allowance) =Kshs20,160/= x 3).....Kshs60,480/=

Gratuity for 8 years(kshs20,160/= *8/2).....Kshs80,640/=

Sacco contribution.....Kshs154,417/=



Leave for 2017(21 days)
 $(14,160/= \times 21/30)$Kshs9,912/=

Compensation= $Kshs.20,160/= \times 12$ Kshs241,920/=

Sub-Total =Kshs.1,085,328/=

Less Sacco loan balance.....Kshs248,801/=

Total= Kshs298,568/=

x. Mimi Dama Otis Nzererah 10th Claimant) – Sales Assistant (Mombasa)

Three months' gross wages instead of notice (basic pay Kshs13,280/=+ Kshs5,670/=(house allowance) =Kshs18,900/= x 3).....Kshs56,700/=

Gratuity for 12 years($kshs18,900/= \times 4/2$).....Kshs37,800/=

Leave for 2017(21 days)
 $(20,160/= \times 8/2)$Kshs9,261/=

Compensation= $Kshs.18,900/= \times 12$ Kshs226,800/=

Total= Kshs330,561/=

xi. Gladys Mwhaki Wainaina (12th Claimant) – Sales Assistant church house (Nairobi)

Three months' gross wages instead of notice (basic pay Kshs14,160/=+ Kshs 6,000/=(house allowance) =Kshs.20,160/= x 3).....Kshs60,480/=

Gratuity for 12 years($kshs20,160/= \times 12/2$).....Kshs241,920/=

Sacco contribution.....Kshs210,878/=

Leave for 2017(21 days)
 $(14,160/= \times 21/30)$Kshs9,912/=

Compensation= $Kshs18,900/= \times 12$ Kshs226, 800/=

Sub-Total =Kshs749,990/=

Less Sacco loan balance.....Kshs170,630/=

Total= Kshs579,360/=

xii. Amos Kiprotich Limo (13th Claimant) – sales assistant (Eldoret)

Three months' gross wages instead of notice (basic pay Kshs14,160/=+ Kshs 6,000/=(house allowance) =Kshs20,160/= x 3).....Kshs60,480/=

Gratuity for 12 years($kshs18,900/= \times 4/2$).....Kshs37,800/=

Sacco contribution.....Kshs82,595/=

Leave for 2017(21 days)
 $(13,300/= \times 21/30)$Kshs9,310/=

Compensation= $Kshs.18,900/= \times 12$ Kshs226,800/=

Sub-Total =Kshs413,205/=

Less Sacco loan balance.....Kshs167,175/=



Total= Kshs246,030/=

xiii. Kipkemoi Ng'eno (14th Claimant) – sales Assistant (Eldoret)

Three months' gross wages instead of notice (basic pay Kshs10,000/=+ Kshs 5,000/=(house allowance) =Kshs15,000/= x 3).....Kshs45,000/=

Gratuity for 2 years(kshs15,000/=*2/2).....Kshs15,000/=

Leave for 2017(21 days)

(10,000/= x 21/30).....Kshs7,000/=

Compensation=Kshs15,000/= x 12Kshs180,000/=

Total= Kshs247,700/=

xiv. Christine Naliaka Wangwa(15th Claimant) – sales assistant (Eldoret)

Three months' gross wages instead of notice (basic pay Kshs10,500/=+ Kshs 5,000/=(house allowance) =Kshs15,000/= x 3).....Kshs45,000/=

Gratuity for 2 years(kshs15,000/=*2/2).....Kshs15,000/=

Compensation=Kshs15,000/= x 12Kshs180,000/=

Total= Kshs240,000/=

xv. Jackim Omanyoo (16th Claimant) – ware house manager (Nairobi HQ)

Three months' gross wages instead of notice (basic pay Kshs26,422/=+ Kshs 11,000/=(house allowance) =Kshs37,422/= x 3).....Kshs112,226/=

Gratuity for 16 years(kshs37,422/=*16/2).....Kshs299,376/=

Sacco contribution.....Kshs153,000/=

Compensation=Kshs37,422/= x 12.....Kshs449,064/=

Sub-Total =Kshs.1,013,706/=

Less Sacco loan balance.....Kshs186, 428/=

Total= Kshs827,278/=

xvi. Kennedy Gachwe Wambui (17th claimant) – sales assistant Hurlingham (Nairobi)

Three months' gross wages instead of notice (basic pay Kshs13,300/=+ Kshs 5,600/=(house allowance) =Kshs18,900/= x 3).....Kshs56,000/=(sic)

Gratuity for 4 years(kshs18,900/=*4/2).....Kshs37,800/=

Sacco contribution.....Kshs180,767/=

Leave for 2017(21 days)

(13,300/= x 21/30).....Kshs9,310/=

Compensation=Kshs.18,900/= x 12Kshs226,800/=

Sub-Total =Kshs.510,677/=

Less Sacco loan balance.....Kshs186,711/=

Total= Kshs323,966/=



- xvii. Roselyne Night Omondi (18th claimant) – sales assistant manager (Kisumu)
- Three months' gross wages instead of notice (basic pay Kshs10,000/=+ Kshs 5,000/=(house allowance) =Kshs15,000/= x 3).....Kshs45,000/=
- Gratuity for 2 years(Kshs15,000/=*2/2).....Kshs15,000/=
- Compensation=Kshs15,000/= x 12.....Kshs180,000/=
- Total= Kshs247,000/=
- xviii. David Mwebi Angwenyi (19th claimant) – sales assistant Hurligham (Nairobi)
- Three months' gross wages instead of notice (basic pay Kshs17,150/=+ Kshs 7,000/=(house allowance) =Kshs24,150/= x 3).....Kshs72,450/=
- Gratuity for 9 years(kshs24,150/=*9/2).....Kshs108,675/=
- Leave for 2017(21 days)(Kshs17,150*21/30)..Kshs12,005/=
- Sacco contribution.....Kshs156,256.25
- Compensation=Kshs24,150/= x 12.....Kshs289,800/=
- Sub-Total =Kshs.639,185.25/=
- Less Sacco loan balance.....Kshs325,083/=
- Total= Kshs314,103.25/=

4. The respondent entered appearance through Kiptinness & Odhiambo Associates Advocates on 26th July, 2017 and on 21st November, 2017 it changed its legal representation and appointed Odera Were, Advocate.
5. On 2nd January, 2018 the respondent filed a reply to the claim. The reply is accompanied with a written statement by Nancy N. Kahuthia. In the reply to the claim the respondent prays that the claimants' cause be dismissed with costs for want of merits.
6. On 15th November, 2019 the respondent filed a list of documents and a bundle of copies of the listed documents.
7. On 26th June, 2023 the respondent filed the written statement by Daniel Ndegwa Karanu(RW1) who substituted and adopted the statement by Nancy N. Kahuthia.
8. This cause came up for hearing in open court on 3rd March, 2023 when the 3rd claimant (CW1) testified on his own behalf and on behalf of the other claimants. CW1 continued on 19th June, 2023, when the claimants' case closed.
9. The defence was heard on 26th June, 2023 when RW1 testified and the respondent's case was closed.
10. Counsel for both parties addressed and summed up their respective client's case by way of written submissions. Counsel for the claimant, Mr. Wambeyi, filed his submissions on 24th October, 2023 while the respondent's counsel, Mr. Were, filed his submissions on 27th November,2023.

II. The Claimants' Case

11. The claimants' case is expressed in the memorandum of claim, the oral and documentary evidence adduced through the 3rd claimant (CW1) and the written submissions by their counsel.



12. The claimants aver that they were engaged variously by the respondent with the 1st claimant employed for 10 years and 9 months as a Branch Manager in Nyeri; the 2nd claimant was employed on 14th April, 2014 as a branch manager, Eldoret; the 3rd claimant was employed on 13th August, 2008 as a branch manager, Nakuru; the 4th claimant was employed on 13th August, 2008 as a branch manager, Mombasa; the 5th claimant was employed on 2nd October, 2013 as an accountant; the 6th claimant was employed on 7th March, 2015 as a branch manager, Nairobi; the 7th claimant was employed on 22nd September, 2016 as a branch manager, Kisumu; the 8th claimant was employed on 30th March, 2015 as a sales assistant in Nakuru; the 9th claimant was employed on 25th May, 2009 as a sales assistant, Mombasa; the 10th claimant was employed on 1st December, 2012 as sales assistant, Mombasa; the 12th claimant was employed on 25th May, 2009 as a sales assistant, church house- Nairobi; the 13th claimant was employed on 25th May, 2009 as a sales assistant, Eldoret; the 14th claimant was employed on 15th October, 2014 as a sales assistant, Eldoret; the 15th claimant was employed on 30th March, 2015 as a sales assistant, Eldoret; the 16th claimant was employed on 1st April, 2001 as a warehouse manager; the 17th claimant was employed on 1st December, 2012 as a sales assistant, Hurlingham; the 18th claimant was employed on 15th December, 2014 as a sales assistant, Kisumu; and the 19th claimant was employed on 1st September, 2007 as a sales assistant in Hurlingham. CW1 testified that the 11th claimant withdrew her claim in this cause.
13. It is stated that CW1 received his dismissal letter on 20th July, 2017 after this cause had been filed in court yet the claimants had first made an application to stop their termination. It is stated that CW1 used to sell scriptural materials at the respondent's book centres. CW1 testified that his dismissal letter was handed to the 8th claimant and the shop where they both worked was closed down by the respondent. CW1 testified that the claimants were dismissed vide the letters dated 20th July, 2017 which were served upon them on various dates with the 1st, 4th, 6th, 8th, 10th, and 18th claimants served on 21st July, 2017, while the 2nd, 3rd, 5th, 7th, 12th, 13th, 14th, 15th, 16th, 17th and 19th claimants were served with the letters of dismissal on 20th July, 2017.
14. It is stated that while the cause was pending in court, the respondent made various payments to the claimants in November and December, 2017. It is stated that the respondent wrote a letter to the 19th claimant dated 19th July, 2017 relating to restructuring process, but an order had already been issued on 18th July, 2017 stopping the same. It is stated that no notice of redundancy was issued to the claimants, or the salary in lieu of notice paid to them. CW1 testified that in November and December, 2017 he received Kshs17,000 vide cheques given to their advocate. He stated that no other payment was received from the respondent. He testified that all the claimants received payments based on their salary but there was no disclosure from the respondent on what the said payments covered.
15. CW1 testified that the claimants' claim for Sacco contributions is based on the fact that the same were deducted from their salaries. CW1 stated that they used to take loans from the Sacco, Bibilia Sacco. CW1 testified that the money they are seeking is the unremitted Sacco dues that had been deducted from their salaries by the respondent. He stated that in a meeting held on 12th May, 2017 there was no mention of restructuring initiative by the respondent.
16. CW1 stated that the letter from the Labour office produced by the respondent had not been copied to the branch managers and the same was done after the claimants had been terminated on 20th July, 2017. CW1 stated that the alleged dues in the respondent's letter dated 15th August, 2017 were not paid to CW1 or to the 8th claimant.



17. In cross-examination, CW1 conceded that he was employed in August, 2008 and as of July, 2017 he had not completed 9 years of service with the respondent. He stated that his letter of termination was also not in court. He conceded that the letters of restructuring by the respondent were served upon all the claimants. He stated that all claimants were asked to apply for alternative positions but he did not apply. He conceded that those who applied for the alternative positions were re-engaged.
18. CW1 further stated that he was not aware whether the 11th claimant had been re-engaged as she had authorized him to pursue her claim, although he had not seen her letter of dismissal. He conceded that if the claimants had failed to apply for the alternative positions as directed, then, there was no way they could have been re-engaged. He conceded that the claimants' letter of demand dated 6th July, 2017 did not stipulate the dues claimed. He stated that the respondent did not compute or pay the benefits as stated in the letter of redundancy. He stated that the respondent did not inform the claimants of the restructuring and no meetings were held to help them understand the process as discussed in a meeting of 12th May, 2017. He however conceded that restructuring was discussed in the meeting of 12th May, 2017 held at All Saints Cathedral.
19. CW1 stated that he was the claimants were not aware that all information about the restructuring was available on the respondent's website, nor the notice that no one was to proceed on leave during the restructuring period. He stated that the office at Nakuru was closed with new padlocks to deny him access.
20. He conceded that the statements from the Sacco were not certified. He testified that the respondent remitted claimant's contribution to NSSF but stated that the claimants were claiming gratuity. He stated that although his letter of confirmation was on the letterhead of the bookshop, the same had been signed by the respondent's director. He stated that all the dismissal letters were dated 20th July, 2017 and this cause had been filed before the termination. He conceded that the restructuring had been communicated to him before the cause was filed.
21. In re-examination, CW1 stated that this cause was filed before the claimants were terminated to stop the restructuring and the other reliefs were in the alternative in the event the claimants were terminated. He stated that the issue of who the proper respondent ought to be between the respondent and the Textbook Centre had been dealt with in a ruling in this cause wherein the court found that the respondent herein is the proper respondent. He further stated that the restructuring intended to abolish all the positions held by the claimants. He stated that he was not aware whether the minutes of the meeting held at the All Saint's Cathedral were availed in court.
22. CW1 further stated that the letter addressed to the labour office at Nakuru was received on 24th July, 2017 when this cause was already in court. He stated that the respondent did not involve the claimants in the issues it raised with the labour office. CW1 stated that although he did not find an alternate occupation, he now engages in personal business. He testified that the other claimants had either found alternate occupation or were engaged in business.
23. It is on the basis of the foregoing evidence and circumstances that the claimants are seeking that judgment be entered in their favour as prayed in the memorandum of claim and based on the filed tabulation of their dues.

III. The Respondent's Case

24. The respondent's case is contained in the reply to the memorandum of claim and the oral and documentary evidence adduced through RW1, the deputy director-programmes, alongside the submissions by counsel.



25. In the response to the claim, the respondent pleads that it is not the proper respondent as the claimants were employed by Scripture Union Christian Book Centre (SUCBC), a different and distinct legal entity from the respondent. It is however admitted that the respondent owns the Book Centre. It is pleaded that although the respondent was not the employer, the restructuring was not unlawful as it complied with the provisions of Section 40 of the *Employment Act* (the Act). It is admitted that the respondent had already made an offer to the claimants based on their alternative prayers and hence it is pleaded that the cause as filed is premature.
26. In his testimony in court RW1, the deputy director -programmes with the respondent, relied on his filed written statement and adopted that of Nancy Kahuthu as his evidence-in-chief. He admitted that the payslips produced by the claimants had been generated by the respondent and bore its name as the employer. RW1 conceded that there had been an order stopping the restructuring but the respondent proceeded to terminate the claimants allegedly because the Book Centre was not a party in this cause.
27. RW1 alleged that had the Book Centre been sued the restructuring process could not have progressed. He admitted that although the dismissal letter was on the letterhead of the Book Centre, the logo thereon was that of the respondent. He stated that although the court order stopping the restructuring was issued on 19th July, 2017 it was only received by the respondent later on 21st July, 2021. He testified that the resolutions of the board filed in court recommended that the book centre at Nakuru be closed. He stated that he had the authority from the respondent to testify on its behalf although none was filed in court. He stated that the minutes of the meeting held on 12th May, 2017 were served on the labour office on 24th July, 2017. He admitted that the labour office was not notified of the court case that was pending in court. He admitted that the claimants were not copied in the correspondence to the labour office. He admitted that their advocates on record did not advise them on how to handle the process.
28. He stated that the monies paid to the claimants through cheques were salaries although not for any particular period but part of the termination package. He admitted that there was no record on how the amounts were paid to the claimants. He admitted that Mr. Kiptinness, their advocate then, also sat in the Board of the respondent and was aware of the proceedings in this cause.
29. In re-examination, he stated that it was the book centre which was being restructured and not the respondent. He stated that they proceeded with the termination of the claimants on 20th July, 2017 despite a court order stopping the process. He stated that during the interviews conducted on 19th July, 2017 none of the claimants indicated their intention to continue working for the respondent. He admitted that some of the claimants attended the meeting of 12th May, 2017 where the structuring process was discussed in detail.
30. It is on the basis on the foregoing evidence and circumstances that the respondent prays that the claimants' cause be dismissed with costs.

IV. Submissions By Counsel

31. On the one hand, the claimants' counsel submitted on four issues – What was the salary of the claimant(s) at the time of termination? Was the termination of the claimants by the respondent on account of redundancy lawful both in substance and procedure? If the termination was unlawful what reliefs are the claimants entitled to and in what qualification? and, Who is to meet the costs of the cause?
32. On the first issue, it is submitted that the respondent did not object to the stated positions occupied by the claimants or the salary they earned as per the calculations of dues adduced in evidence. The court is urged to affirm the same.



33. On the second issue, it is submitted that the respondent in a disguised redundancy unfairly and unlawfully terminated the claimants. It is submitted that subject to Sections 2, 40, 43 and 45 of the Act, an employer must comply with the set down conditions under section 40 of the Act and ensure both substantive and procedural fairness in executing redundancy. Counsel cited *Mary Chemweno v KPLC (LTD)* (2014 eKLR; *Walter Ogal Anuro v TSC* (2013) eKLR; and *Janet Nyandino v KCB* (2017) eKLR in laying emphasis on the need for both procedural and substantive fairness.
34. Further counsel cited *Daniel Mburu Muriu v Hygrotech East African Ltd* (2021) eKLR; *Ruth Wairagu v Elite Travel Services Ltd (HQG Kenya)* (2021) eKLR; *Titus Muriuki Ndirangu v Beverly School of Kenya Ltd* (2022) eKLR; and *Andrew Ondieki v DHL Supply Chain Ltd* (2021) eKLR in emphasizing the need for fairness before redundancy.
35. It is submitted that in the notice of redundancy dated 20th July, 2017 the respondent referred to failure to receive job applications from the claimants for alternative positions on offer based on previous communication relating to financial difficulties. It is submitted that the restructuring process had been halted by a court order, and if the respondent wished to terminate the claimants' employment based on financial difficulties the same ought to have been pleaded and proved.
36. It is submitted that the respondent did not adduce evidence in say bank statements to demonstrate that it was undergoing financial difficulties, to found good and lawful reason(s) for declaring the claimants redundant or for requiring them to apply for non -existing positions. It is submitted that under Section 43 of the Act the respondent failed to prove the reason for terminating the claimants lawful under Section 45 of the Act.
37. On the procedure adopted, citing *Kenya Airways Limited v Aviation and Allied Workers Union of Kenya and 3 Others* (2014) eKLR, it is submitted that considering Section 40 of the Act, the respondent did not demonstrate that a notice of not less than a month was issued to the claimants and the labour office prior to the termination. It is submitted that the communication to the labour office was undertaken after the claimants had been terminated. The court is urged to find that the respondent acted afoul Section 40 of the Act.
38. It is further submitted that the procedure adopted by the respondent is alien to the law and violated Article 47 of *the Constitution*, Section 4 of the Fair Administrative Actions Act, and Section 45 of the Act.
39. On the foregoing basis, the court is urged to allow the claim and grant all the reliefs sought with costs to the claimants.
40. On the other hand, the respondent's counsel submitted globally in support of its defence seeking that the cause to be dismissed with costs.
41. It is submitted that the claimants were employees of the Scripture Union Christian Book Centre which is distinct from the respondent. It is submitted that the claimants were issued with notice of intention to restructure the respondent's organisation. It is submitted that the claimants were notified of new positions that had been created and were advised to apply for those positions if they deemed themselves qualified. It is submitted that none of them tendered an application for consideration. It is submitted that the failure to apply for the new positions created led to the claimants' termination on ground of redundancy and this was communicated to them before implementation.
42. It is submitted that the claimants' move to seek orders to stop the restructuring was abandoned and the claimants' sought to enforce the prayers in the alternative. It is submitted that since the claimants were not willing to apply for the newly created positions, the respondent was right in terminating



them. It is submitted that the claimants were informed of their entitlement to terminal benefits in terms of severance pay, leave earned and not taken, and notice pay but they purportedly moved to court prematurely.

43. Citing *Caroline Atieno Osweta v Kenya Yunchery Plate Making Ltd* (2013) eKLR, it is submitted that the claimants refused to obey the respondent's directions to apply for the newly created positions in defiance which amounted to failure to obey lawful directions from the employer.
44. It is submitted that CW1 who represented the claimants in the meetings where financial constraints of the respondent were discussed was present and the minutes of the meeting of 12th May, 2017 are available to show who were in attendance. It is submitted that the claimants plotted against the respondent in declining to apply for the newly created positions. It is further submitted that an employer has a right to declare redundancy based on operational requirements where there is a bonafide economic rationale. Citing *Simon Otieno Makanda & Another V Kenya Motors & Equipment Limited* (2013) eKLR and *Bruce Mubiru Lwanga v Board of Governors St. Andrews School Turi* [2023] KEELRC 1209 (KLR), it is submitted that the claimants defied the respondent's directions and thus the respondent should be faulted for terminating them on redundancy.
45. On the reliefs, the court is urged to find and hold that since the claimants failed to plead, particularize, and prove the special damages claimed they are not entitled to any of the reliefs sought or at all. The court is urged to dismiss the cause with costs.

V. Issues For Determination

46. Upon careful examination and consideration of the pleadings filed, the oral and documentary evidence tendered from both sides, and the submissions by counsel for both parties, the court identifies the following issues for determination -
 - a. Whether the respondent is the properly sued;
 - b. Whether the claimants were wrongfully, unfairly, and unlawfully terminated;
 - c. Whether the claimants are entitled to the reliefs sought; and
 - d. Costs.

VI. Proper Respondent

47. The respondent's case is that the claimants were employed by Scripture Union Book Centre, which is distinct from the respondent. The court (Radido J) in a ruling delivered on 8th November, 2017 observed at paragraph 30 that the respondent and the Scripture Union Book Centre despite being distinct legal entities had interchangeably addressed the claimants vide various correspondences. The court did not however reach a finding on who the proper respondent ought to be but observed that the two entities concurrently dealt with the claimants as their employer.
48. RW1 in cross-examination conceded that although the letters of redundancy issued to the claimants were issued on a letterhead of Scripture Union Book Centre the logo in the said letters was that of the respondent. He stated that the payslips issued to the claimants adduced in court were also issued by the respondent.
49. It is not disputed that when some of the claimants raised queries regarding the intended restructuring of the Scripture Union Christian Books Centre, the response to the said queries were made by the respondent (D-Exh1-4). This confirms that the respondent was the employer. The respondent had an



opportunity to refer the claimants' queries to the proper entity to respond but took it upon itself to respond thereto.

50. In *Kenya Hotels and Allied Workers Union v Diani Sea Resort T/A Carlslake Nominee Limited* (2015) eKLR Rika J in holding that a suit could not be defeated by the misnaming of a respondent observed as follows – “The claim cannot fail on the ground that the respondent is misnamed. This Court has on many occasions pointed out that employees cannot be closed out from pursuing their claims on the ground that they have given court the wrong description, of the business and legal structures which constitute their employers. Employees hardly know what these capacities are, and what the employers' business and legal structures are. Frequently, businesses are structured in ways that are meant to avoid regulatory burdens, such as taxes and labour regulations. They have multiple layers of business and legal forms. Employees would be hampered in correcting employment wrongs, if they are expected to sift through these multiple layers before filing of their claims...”.
51. While respondent and Scripture Union Christian Books Centre may be different legal entities, the two engaged with the claimants interchangeably as the employers. The claimants sued the entity responsible for issuing the restructuring notices. The respondent defended the suit to its logical conclusion. Nothing prevented the respondent from seeking leave to issue a third-party notice to Scripture Union Christian Books Centre, if it was of the view that it was the proper party as the employer. The respondent had no business defending this cause if it was not the employer, neither was it obligated to submit evidence on behalf of another entity in defence if it was not the employer.
52. Consequently, the court finds that the respondent is properly sued in this cause.

VII. Dismissal

53. CW1 testified that although his letter of dismissal was not in court he was nonetheless dismissed. He however referred to the letters of dismissal issued to the other claimants are dated 20th July, 2017. The letters issued to the claimants were headed “RE: Termination Of Employment On Account Of Redundancy”. An excerpt from one of the letters addressed to the 12th claimant reads –

‘Thursday, 20 July 2017

Gladys Mwihaki Wainaina

Bookshop assistant

Church House Bookshop

Dear Gladys Mwihaki,

RE: Termination Of Employment On Account Of Redundancy

Receive greetings in the name of our Lord and saviour Jesus Christ.

We refer to the above matter and previous correspondence exchanged regarding the restructuring process of SUCBC and further to the consultation meetings held on June 14th 2017 & July 11, 2017.

As discussed in the consultation meetings and outlined in our letter dated June 28th, 2017 reference “Change Management on the restructuring of SUCBC: 2nd Communication to Staff”, three (3) options were available for the realigning of Human Resource to the proposed new management structure of SUCBC.

To recap the communication, the options were:



- Iviii. Apply for any two positions, go through the interview and qualify for one position. This means you will remain the organization in the newly structured outlook.
- Iix. Apply for any two positions go through the interview and fail to qualify for any of the positions applied for. This means that you are not eligible o transit in to the new structure. At this point, you will be given notice of termination and the accruing dues.
- Iiix. Voluntarily decline to apply for the interview process, this means that you are not eligible to transit in to the new structure. At this point, you will be given notice of termination and the accruing dues.

Having not received your application for any of the positions outlined, we note that you opted for selected option(iii) above.

Consequently, we hereby terminate with immediate

effect your employment with Scripture Union Christian Book Centre(SUCBC) due to redundancy and in line with the option you picked and you are required to hand over immediately.

Accordingly, your terminal benefits will be computed in accordance with the [Employment Act](#), 200, and shall include the following:

- 58. severance pay of 15 days for each completed year of service.
- 59. leave earned but not taken
- 60. one Month salary in lieu of notice.

The total amount computed shall be subject to tax and all other statutory deductions and any liabilities owed to SUCBC and you will be advised on the settlement plan in due course.

The [Retirement Benefits Act](#) allows you to access 100% of your contributions and 50% of your employer's contributions plus the accrued benefits if you have reached the vesting scale or to transfer them to a new employer's scheme or an individual retirement scheme. 50% of the employer's contribution and accrued benefits can be retained in the current scheme or transferred to the new scheme. Please advise us in writing how you would like your benefits handled.

On behalf of SUBC, and on my own behalf, I want to thank you for the service you have rendered and express our hope for your continued success. May God's blessings be upon you in your future endeavours.

Yours faithfully,

Nancy n. Kahuthia (Mrs)

National Director

CC: Labour Relations Administrators.'

- 54. The termination of the claimants was on redundancy and not because they failed to apply for the newly created positions as asserted by the respondent.



55. Section 2 of the Act defines redundancy as –

“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 the employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

56. The most fundamental issues for determination in this cause is whether the termination was unfair and if the answer is in the affirmative what appropriate remedies may be issued. Section 40 of the Act outlines essential requirements to be followed and applied by an employer invoking termination on redundancy. The legal and procedural obligations of an employer in declaring redundancy are the following as per Section 40 of the Act –

- 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.”

57. The above precautions as outlined in the law are mandatory and not left to the discretion of an employer. Redundancy affects workers’ livelihoods and should be a tool of last resort. This is why the above law is couched in mandatory terms.

58. The respondent issued all the claimants with an identical letter dated 13th June, 2017 and informed them of the plan to restructure its operations. The letter stated that the respondent wished to take decisive action to counter the recurring deficit of the SUCBC bookshops. Enclosed with the letter was a Frequently Asked Questions(FAQs) sheet on how the restructuring would be undertaken. The respondent indicated that all bookshops and support offices would be reorganized and three outlets, Mombasa, Nyeri, and Kisumu would be closed. The letter further indicated that new jobs and roles would be created and the claimants were given an opportunity to apply for any of the new positions that they deemed themselves qualified for. The letter stated that the process would be completed by 31st August, 2017. The newly created positions were allegedly notified to each of the claimants vide identical letters dated 28th June, 2017.



59. All the claimants, other than the 11th claimant, did not apply for the newly created positions. CW1 testified that the claimants did not qualify for the new positions created by the respondent based on the listed minimum requirements. It is the claimants' case that the respondent did not adduce any evidence to prove that it was under financial stress as to terminate the claimants on redundancy.
60. While the respondent through the letters of 13th June, 2017 informed the claimants of the intention to restructure, the letters of 28th June, 2017 intimated that the newly created positions were to replace those positions held by the claimants. Indeed, the respondent deliberately proclaimed that if any employee did not apply for the positions they were entitled to their terminal dues.
61. The Court of Appeal in dealing with the issue of termination on account of redundancy in *Kenya Airways Limited v Aviation and Allied Workers Union of Kenya and 3 Others* (2014) eKLR held that loss of employment by redundancy is at no fault of an employee and arises where services of an employee are superfluous through the practice commonly known as abolition of job or occupation and loss of employment.
62. Section 43 of the Act provides that an employer is obligated to give a valid reason for termination. The respondent states that it had a valid reason for declaring redundancy, being financial constraints as allegedly discussed in the meeting held on 12th May, 2017 where CW1 represented the claimants. The court has perused the minutes of that meeting and observed that indeed it was resolved that the information relating to the closure of the bookshops was to be kept confidential to prevent panic. The court has not come across any tangible grounds for the alleged financial constraints alluded to by the respondent considering that the respondent proceeded to advertise for new positions.
63. Section 47(5) of the Act declares the burden of proof for unfair termination as resting on the employee while the burden of justifying the grounds of termination or wrongful dismissal rests with the employer. RW1 conceded that the labour office was served with a notice of restructuring vide the letter dated 10th July, 2017, which was served on 24th July, 2017. This was after the claimants had already been terminated on grounds of redundancy. The mandatory provisions under Section 40(b) of the Act requires that a notice be issued to the labour officer in charge of the area where the employee is employed prior to termination. Although Section 40 (b) of the Act does not stipulate the notice period as is the case in Section 40 (a) of the Act in the court's view purposive reading and interpretation of the statute would mean the same notice period of thirty days is required in both situations. The notice issued to the Nakuru and Nyeri labour offices was unprocedurally and unlawfully issued after the declaration of redundancy against the claimants. The respondent produced notices served upon Nakuru and Nyeri Labour offices yet the restructuring also affected the shops in Eldoret, Nairobi, Kisumu, and Mombasa. There was no notice to the labour offices in Eldoret, Nairobi, Kisumu or Mombasa on the intended termination on redundancy. This was done against the procedural requirements in Section 40 of the Act.
64. Further, upon declaring the claimants redundant, the respondent did not pay to them for their leave days earned and due, notice pay, or the severance pay. The payment of these entitlements was to be made upon termination on redundancy.
65. The respondent produced minutes of meetings allegedly held in the various shops on diverse dates – on 13th June, 2017 in Mombasa; 14th June, 2017 in Kisumu and Nyeri; 15th June, 2017 in Eldoret and Nakuru; and 16th June, 2017 at the head office in Nairobi, where restructuring was allegedly discussed. The minutes were not signed and while the issue may have been discussed there is no proof that indeed those mentioned attended.



66. As far as the court can deduce, the requirements of Section 40 of the Act as reproduced above were not complied with by the respondent. The court thus finds and holds that the termination of the claimants was unfair and unlawful within the meaning of Section 45 of the Act.
67. The respondent failed on all fronts to comply with the mandatory requirements stipulated in Section 40 of the Act by failing to inform the local labour offices of the intended terminations of the claimants on redundancy and failing to demonstrate reasonable ground(s) for the termination. Consequently, the court finds and holds that the decision taken by the respondent to terminate the claimants on redundancy lacked both in substantive and form/procedure.

VIII. Reliefs

68. Having found and held that the termination of the claimants was unfair and unlawful, the court shall consider and evaluate each of the reliefs sought.
69. The respondent asserts that the claimants failed to specifically plead the damages sought. The claimants pleaded for three months' gross wages in lieu of notice; leave pay; Sacco contributions; provident fund refunds; gratuity; compensation, and costs. The claimants filed a document headed "calculations for the claimants" in support of the reliefs sought. While the tabulations were set out in a different document, the claimants provided oral and documentary evidence in support of their claim. No evidence was adduced by the respondent to counter the claims by the claimants. The respondent as the custodian of records did not avail evidence to the contrary of the claimants evidence, and thus the evidence adduced by the claimants suffice in assessing the appropriate remedies.
70. The first prayer is for three months' gross wages in lieu of notice. There is no explanation offered as to why the claimants are seeking for the payment of three months' gross pay in lieu of notice yet. As the court has found above, the claimants were month to month employees and hence only entitled to one (1) month's notice (28 days) under Section 35 (1) (c) of the Act. In absence of any evidence to the contrary the claimants are entitled to only one (1) month's gross pay in lieu of notice based on their last gross monthly salary. The claimants produced payslips which RW1 confirmed were issued by the respondent. The court shall thus rely on the gross pay as indicated in the said payslips as their last known pay. CW1 and RW1 both testified that the 11th claimant withdrew from the cause as she was retained by the respondent and the court shall thus award this relief to the other 18 claimants as per the table below.



Claimant	Award in lieu of one month's notice
Anthony Kimotho Macharia(1 st claimant)	Kshs37,422/=
Lamech Kiprono Limo(2 nd claimant)	Kshs42,768/=
Michael Onyango Awino(3 rd claimant)	Kshs34,020/=
Josephat N. Bonuke(4 th claimant)	Kshs34,650/=
James Kuboka(5 th claimant)	Kshs54,044/=
Grace Martha Muthui(6 th claimant)	Kshs37,422/=
Isaac Ochieng(7 th claimant)	Kshs23,500/=
Gideon Muturi Wamugunda(8 th claimant)	Kshs15,000/=
Walter Mwanyumba(9 th claimant)	Kshs20,160/=
Mimi Damah Otis Mzererah(10 th claimant)	Kshs18,900/=
Gladys Mwhaki Wainaina(12 th claimant)	Kshs20,160/=
Amos Kiprotich Limo(13 th claimant)	Kshs18,900/=
Kipkemoi Ng'eno(14 th claimant)	Kshs15,000/=
Christine Naliaka Wangwa(15 th claimant)	Kshs15,000/=
Jockim Wandera Omanyao(16 th claimant)	Kshs37,422/=
Kennedy Gachwe Wambui(17 th claimant)	Kshs18,900/=
Roselyne Knight Omondi(18 th claimant)	Kshs15,000/=
David Mwebi Angwenyi(19 th claimant)	Kshs24,150/=

71. The second prayer is for unpaid leave days. The claimants with earned but unpaid leave days computed their claim in the 'computation of the claimants'. The respondent did not adduce evidence or produce records to the contrary in accordance to Sections 10 and 74 of the Act. In the absence of such evidence to the contrary, the court finds and holds that the claimants, on a balance of probabilities, proved that they did not take leave as computed below –



Claimant	Unpaid leave earned
Lamech Kiprono Limo (2 nd claimant) (2017-21 days) 29,798x21/30=20,837.60	Kshs20,837.60/=
Michael Onyango Awino (3 rd claimant) (2017-21 days) 23,520x21/30=16,464/=	Kshs16,464/=
James Kuboka (5 th claimant) (2016/17-42 days) 38,044x21x2/30=53,261.60	Kshs53,261.60/=
Grace Martha Muthui (6 th claimant) (2015/16/17-63 days) 24,422x21x3/30=Kshs55,486.20	Kshs55,486.20/=
Walter Mwanyumba (9 th claimant)2017-21 days 14,160 x 21/30=9,912	Kshs9,912/=
Mimi Damah Otis Mzererah (10 th claimant) 2017-21 days 20,160 x21/30=9,261(in this case the basic pay ought to be Kshs13,230/= and not 20,160/= although the calculation is correct)	Kshs9,261/=/=
Gladys Mwhiki Wainaina (12 th claimant) (2017-21 days) 14,160 x 21/30=9912/=	Kshs9,912/=
Amos Kiprotich Limo (13 th claimant) (2017-21 days) 13,300x 21/30=9,310/=	Kshs9,310/=
Kipkemoi Ng'eno (14 th claimant) (2017-21 days) 10,000 x21/30=7,000/=	Kshs7,000/=
Kennedy Gachwe Wambui (17 th claimant) (2017-21 days) 13,300x 21/30=9,310/=	Kshs9,310/=



David Mwebi Angwenyi (19 th claimant) (2017-21 days) $17,150 \times 21/30 = 12,005$	Kshs12,005/=
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72. The third prayer is for refund of Sacco contributions by the 1st, 3rd, 4th, 5th, 6th, 9th, 12th, 13th, 16th, 17th & 19th claimants. During the hearing CW1 stated that these claimants were members of Biblia Sacco from where they enjoyed loans and had shares in contribution. He stated that the claimants were seeking monies that were deducted and not remitted to the Sacco by the respondent. The court has perused the statements and the payslips availed by the claimants but the same fail to discern how much was unremitted by the respondent. The Biblia Sacco is a distinct entity from the respondent which was not enjoined in this cause and the contributions and loan deductions thereof can only be processed by the Sacco. This claim can only be processed through the Sacco. Saccos are equipped, through their by-laws, with mechanisms to recover unpaid loans from their members and thus the court cannot issue orders against the Sacco that is not party in this cause. In any event, the amounts are neither ascertained nor quantified. This prayer fails in its entirety.
73. The fourth prayer is for refund of provident funds. The claimants' counsel did not submit on this claim. Like the Sacco funds claimed above, the provident funds were allegedly remitted by the respondent and the only obligation that the respondent may have is to introduce the claimants to the fund manager for the claimants to pursue their savings. There is no nexus of liability between the respondent and the management of the fund.
74. The fifth prayer is for gratuity. The claimants' counsel in his submission argued that the prayer for gratuity was meant to have been severance pay. However, parties are bound by their pleadings, and in the absence of an amendment that argument holds no water and the same remains as it is. No evidence was adduced that the claimants were entitled to gratuity under their employment contracts or by agreement between the parties. Gratuity may only be paid if and where the same is agreed upon by and between the parties and or provided for in the contract of service or at the discretion of an employer. This prayer for payment of gratuity is denied.
75. In the letters of dismissal dated 20th July, 2017 the respondent agreed and undertook to pay the claimants severance pay at the rate of 15 days for each completed year of service. RW1 reiterated this position during the hearing asserting that the respondent had offered to settle the same. That was before the claimants filed this cause. Section 40 of the Act provides for severance pay at the rate of 15 days for each completed year of service in case of redundancy as in this cause. The claimants are entitled to severance pay except for the 7th claimant who had not completed one year of service with the respondent. The severance pay is awarded as hereunder –



Claimant	Severance pay amount
Anthony Kimotho Macharia (1 st claimant) 10 years x 15/30x 37,422	Kshs187,110/=
Lamech Kiprono Limo (2 nd claimant) 3 years x 15/30 x 42,768=	Kshs64,152/=
Michael Onyango Awino (3 rd claimant) 8 years x 15/30 x34,020=	Kshs136,080/=
Josephat N. Bonuke (4 th claimant) 8 years x 15/30 x 34,650=	Kshs138,600/=
James Kuboka (5 th claimant) 3 years x 15/30 x54,044	Kshs81,066/=
Grace Martha Muthui (6 th claimant) 12 years x 15/30 x37,422	Kshs224,532/=
Isaac Ochieng (7 th claimant) 9 months worked	-
Gideon Muturi Wamugunda (8 th claimant) 2 years x 15/30 x 15,000	Kshs15,000/=
Walter Mwanyumba (9 th claimant) 8 years x 15/30 x20,160	Kshs80,640/=
Mimi Damah Otis Mzererah (10 th claimant) 4 years x 15/30x 18,900/=	Kshs37,800/=
Gladys Mwihaki Wainaina (12 th claimant) 8 years x 15/30 x20,160=	Kshs80,640/=
Amos Kiprotich Limo (13 th claimant) 8 years x 15/30 x18,900	Kshs75,600/=
Kipkemoi Ng'eno (14 th claimant) 2 years x 15/30 x 15,000	Kshs15,000/=
Christine Naliaka Wangwa (15 th claimant)	Kshs15,000/=



2 years x 15/30 x 15,000	
Jockim Wandera Omanyoo (16 th claimant) 16 years x 15/30x 37,422	Kshs299,376/=
Kennedy Gachwe Wambui (17 th claimant) 4 years x 15/30 x18,900	Kshs30,000/=
Roselyne Knight Omondi (18 th claimant) 2 year x 15/30 x 15,000=	kshs15,000/=
David Mwebi Angwenyi (19 th claimant) 9 years x 15/30 x24,150	Kshs108,675/=

76. The sixth prayer is for compensation in terms of section 49 (1) (c) of the Act. This law provides that where the termination of employees is unjustified, an award equivalent to wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal may be awarded. The respondent failed or neglected to comply with Section 40(1) of the Act. The redundancy was unjustified and rendered the claimants jobless. The respondent failed and or refused to engage the claimants in the process at least to enable them plan ahead, while redundancy is a lawful way of terminating employees based on the law cited above, the same should be strictly administered in accord with the law. It should not be applied at the whims and caprice of an employer.
77. The court finds that an award of ten (10) months gross pay for each of the claimants is reasonable compensation except for the 7th claimant who is awarded compensation equivalent to three (3) months gross pay. The award is tabulated below –



Claimant	Amount
Anthony Kimotho Macharia(1 st claimant)	Kshs37,422/= x 10 Kshs374,220/=
Lamech Kiprono Limo(2 nd claimant)	Kshs42,768/= x 10 Kshs427,680/=
Michael Onyango Awino(3 rd claimant)	Kshs34,020/= x 10 Kshs340,200/=
Josephat N. Bonuke(4 th claimant)	Kshs34,650/= x 10 Kshs346,500/=
James Kuboka(5 th claimant)	Kshs54,044/= x 10 Kshs540,440/=
Grace Martha Muthui(6 th claimant)	Kshs37,422/= x 10 Kshs374,220/=
Isaac Ochieng(7 th claimant)	Kshs23,500/= x 3 Kshs70,500/=
Gideon Muturi Wamugunda(8 th claimant)	Kshs15,000/= x 10 Kshs150,000/=
Walter Mwanyumba(9 th claimant)	Kshs20,160/= x 10 Kshs201,600/=
Mimi Damah Otis Mzererah(10 th claimant)	Kshs18,900/= x 10 Kshs189,000/=
Gladys Mwihaki Wainaina(12 th claimant)	Kshs20,160/= x 10 Kshs201,600/=
Amos Kiprotich Limo(13 th claimant)	Kshs18,900/= x 10 Kshs189,000/=
Kipkemoi Ng'eno(14 th claimant)	Kshs15,000/= x 10 Kshs150,000/=
Christine Naliaka Wangwa(15 th claimant)	Kshs15,000/= x 10



	Kshs150,000/=
Jockim Wandera Omanyo(16 th claimant)	Kshs37,422/= x 10 Kshs374, 220/=
Kennedy Gachwe Wambui(17 th claimant)	Kshs18,900/= x 10 Kshs189,000/=
Roselyne Knight Omondi(18 th claimant)	Kshs15,000/= x 10 Kshs150,000/=
David Mwebi Angwenyi(19 th claimant)	Kshs24,150/= x 10 Kshs241,500/=

78. CW1 confirmed that all the claimants received some money in November and December, 2017 from the respondent as evidenced by the cheques produced by the respondent. The amounts received are to be deducted from the award payable to the claimants as follows –



Claimant	Amount received
Anthony Kimotho Macharia(1 st claimant)	Kshs19,680/= x 2 Kshs39,360/=
Lamech Kiprono Limo(2 nd claimant)	Kshs34,346/= x 2 Kshs68,692/=
Michael Onyango Awino(3 rd claimant)	Kshs17,692/= x 2 Kshs35,384/=
Josephat N. Bonuke(4 th claimant)	Kshs20,766/= x 2 Kshs41,532/=
James Kuboka(5 th claimant)	Kshs27,996/= x 2 Kshs55,992/=
Grace Martha Muthui(6 th claimant)	Kshs12,942/= x 2 Kshs25,884/=
Isaac Ochieng(7 th claimant)	Kshs20,815/= x 2 Kshs41,630/=
Gideon Muturi Wamugunda(8 th claimant)	Kshs17,692/= x 2 Kshs35,384/=
Walter Mwanyumba(9 th claimant)	Kshs9002/= x 2 Kshs18,004/=
Mimi Damah Otis Mzererah(10 th claimant)	Kshs16,572/= x 2 Kshs33,144/=
Gladys Mwihaki Wainaina(12 th claimant)	Kshs6,443/= x 2 Kshs12,886/=
Amos Kiprotich Limo(13 th claimant)	Kshs9808/= x 2 Kshs19,616/=
Kipkemoi Ng'eno(14 th claimant)	Kshs13,819/= x 2 Kshs27,638/=
Christine Naliaka Wangwa(15 th claimant)	Kshs13,819/= x 2



	Kshs27,638/=
Jockim Wandera Omanyoo(16 th claimant)	Kshs19,558/= x 2 Kshs39,116/=
Kennedy Gachwe Wambui(17 th claimant)	Kshs5,352/= x 2 Kshs10,704/=
Roselyne Knight Omondi(18 th claimant)	Kshs13,819/= x 2 Kshs27,638/=
David Mwebi Angwenyi(19 th claimant)	Kshs8,378/= x 2 Kshs16,756/=

IX. Costs

79. The claimants are awarded costs of the cause and interest on the amounts awarded.

X. Disposal

80. In the disposal of the cause, the court issues the following orders –

a. A declaration be and is hereby issued that the termination of the claimants by the respondent on redundancy was unfair and unlawful for lack of both substance and form/procedure.

b. The claimants are awarded one month's gross wages in lieu of notice; unpaid leave days dues; severance pay at the rate of 15 days for each completed year of service; and compensation for the wrongful, unfair, and unlawful dismissal as follows –

i. Anthony Kimotho Macharia (1st claimant) - Branch manager(Nyeri)

One month's gross wages in lieu of notice.....Kshs37,422/=

Severance pay for 10 years.....Kshs187,110/=

Compensation (Kshs.37,422/= x 10).....Kshs374,220

TotalKshs598,772/=

Less amount already paid.....(Kshs39,360/=)

Balance due/award =Kshs.559,392/=

ii. Lamech Kiprono (2nd claimant) - Branch manager (Eldoret)

One month's gross wages in lieu of notice....Kshs42,768/=

Unpaid leave days.....Kshs.20, 837.60

Severance pay for 3 yearsKshs64,152/=

Compensation (Kshs.42,768/= x 10).....Kshs427,680

TotalKshs555,437.60

Less amount already paid.....(Kshs68,692/=)



Balance due/award =Kshs.486,745.60

iii. Michael Onyango Awino (3rd claimant) - Branch manager (Nakuru)

One month's gross wages in lieu of notice....Kshs34,020/=

Unpaid leave days.....Kshs16,464/=

Severance pay for 8 yearsKshs136,080/=

Compensation (Kshs.34,020/= x 12).....Kshs340,200/=

TotalKshs526764/=

Less amount received.....(Kshs35,384/=)

Balance due/award =Kshs491,380/=

iv. Josephat N. Bonuke (4th claimant) - Branch Manager (Mombasa)

One month's gross wages in lieu of notice....Kshs34,650/=

Severance pay for 8 yearsKshs138,600/=

Compensation (Kshs.34,650/= x 10).....Kshs346,500/=

Total Kshs519750/=

Less amount already paid.....(Kshs41,532/=)

Balance due/award =478,218/=

v. James Kuboka (5th claimant) – Accountant (Nairobi HQ)

One month's gross wages in lieu of notice....Kshs54,044/=

Unpaid leave days.....Kshs53,261.60

Severance pay for 3 yearsKshs81,066/=

Compensation (Kshs54,044/= x 10).....Kshs540,440/=

TotalKshs728,811.60

Less amount already paid.....(Kshs55,992/=)

Balance due/award = Kshs672,819.60/=

vi. Grace Martha Muthui (6th Claimant) – Branch Manager (Nairobi)

One month's gross wages in lieu of notice....Kshs37,422/=

Unpaid leave days.....Kshs55,486.20/=

Severance pay for 12 yearsKshs224,532/=

Compensation (Kshs.37,422/= x 120).....Kshs374,220/=

TotalKshs691,660.20

Less amount already paid.....(Kshs25,884/=)

Total Balance due/award = Kshs665,776.20=

vii. Isaac Ochieng (7th Claimant) – Branch Manager (Kisumu)

One month's gross wages in lieu of notice....Kshs23,500/=



- Compensation (Kshs.23,500/= x 3).....Kshs70,500/=
- TotalKshs94,000/=
- Less amount already paid.....(Kshs41,630/=)
- Balance due/award = Kshs52,370/=
- viii. Gideon Muturi Wamugunda (8th Claimant) – sales assistant (Nakuru)
- One month's gross wages in lieu of notice.....Kshs15,000/=
- Severance pay for 2 yearsKshs15,000/=
- Compensation (Kshs.15,000/= x 10).....Kshs150,000/=
- TotalKshs180,000/=
- Less amount already paid.....(Kshs35,385/=)
- Balance due/award = Kshs144,615/=
- ix. Walter Mwanyumba (9th Claimant) – Sales Assistant (Mombasa)
- One month's gross wages in lieu of notice....Kshs20,160/=
- Unpaid leave days.....Kshs9,912/=
- Severance pay for 8 yearsKshs80,640/=
- Compensation (Kshs20,160/= x 10).....Kshs201,600/=
- Total.....Kshs312,312/=
- Less amount already paid.....(Kshs18,004/=)
- Balance due/award = Kshs294,308/=
- x. Mimi Dama Otis Nzererah 10th Claimant) – Sales Assistant (Mombasa)
- One month's gross wages in lieu of notice....Kshs18,900/=
- Unpaid leave days.....Kshs9,261/=
- Severance pay for 4 yearsKshs37,800/=
- Compensation (Kshs.18,900/= x 10).....Kshs189,000/=
- Total.....Kshs254,961/=
- Less amount already paid.....(Kshs33,144/=)
- Balance due/award = Kshs221,817/=
- xi. Gladys Mwihaki Wainaina(12th Claimant) – Sales Assistant church house (Nairobi)
- One month's gross wages in lieu of notice.....Kshs20,160/=
- Unpaid leave days.....Kshs9,912/=
- Severance pay for 8 yearsKshs80,640/=
- Compensation (Kshs20,160/= x 10).....Kshs201,600/=
- Total.....Kshs312,312/=
- Less amount already paid.....(Kshs12,886/=)



- Balance due/award = Kshs299,426/=
- xii. Amos Kiprotich Limo (13th Claimant) – sales assistant (Eldoret)
- One month's gross wages in lieu of notice....Kshs18,900/=
- Unpaid leave days.....Kshs9,310/=
- Severance pay for 8 yearsKshs75,600/=
- Compensation (Kshs18,900/= x 10).....Kshs189,000/=
- Total.....Kshs292,810/=
- Less amount received.....(Kshs19,616/=)
- Balance due/award = Kshs273,194/=
- xiii. Kipkemoi Ng'eno (14th Claimant) – sales Assistant (Eldoret)
- One month's gross wages in lieu of notice....Kshs15,000/=
- Unpaid leave days.....Kshs7,000/=
- Severance pay for 2 yearsKshs15,000/=
- Compensation (Kshs15,000/= x 10).....Kshs150,000/=
- Total.....Kshs187,000/=
- Less amount already paid.....(Kshs27,638/=)
- Balance due/award = Kshs159,362/=
- xiv. Christine Naliaka Wangwa (15th Claimant) – sales assistant (Eldoret)
- One month's gross wages in lieu of notice....Kshs15,000/=
- Severance pay for 2 yearsKshs15,000/=
- Compensation (Kshs15,000 / = x 10).....Kshs150,000/=
- Total.....Kshs180,000/=
- Less amount received.....(Kshs27,638/=)
- Balance due/award = Kshs152,362/=
- xv. Jackim Omany (16th Claimant) – Ware house manager (Nairobi HQ)
- One month's gross wages in lieu of notice....Kshs37,422/=
- Severance pay for 16 yearsKshs299,376/=
- Compensation (Kshs.37,422/= x 10).....Kshs374, 220/=
- Total.....Kshs711,018/=
- Less amount already paid.....(Kshs39,116/=)
- Balance due/award = Kshs671,902/=
- xvi. Kennedy Gachwe Wambui (17th claimant) – sales assistant Hurlingham (Nairobi)
- One month's gross wages in lieu of notice....Kshs18,900/=
- Unpaid leave days.....Kshs9,310/=



- Severance pay for 4 yearsKshs30,000/=
- Compensation (Kshs.18,900/= x 10).....Kshs189,000/=
- Total.....Kshs247,210/=
- Less amount already paid.....(Kshs10,704/=)
- Balance due/award = Kshs236,506/=
- xvii. Roselyne Night Omondi (18th claimant) – sales assistant manager (Kisumu)
- One month’s gross wages in lieu of notice.....Kshs15,000/=
- Severance pay for 2 yearsKshs15,000/=
- Compensation (Kshs15,000 /= x 10).....Kshs150,000/=
- Total.....Kshs180,000/=
- Less amount already paid.....(Kshs27,638/=)
- Balance due/award = Kshs152,362/=
- xviii. David Mwebi Angwenyi (19th claimant) – sales assistant Hurligham (Nairobi)
- One month’s gross wages in lieu of notice....Kshs24,150/=
- Unpaid leave days.....Kshs12,005/=
- Severance pay for 9 yearsKshs108,675/=
- Compensation (Kshs24,150/= x 10).....Kshs241,500/=
- Total.....Kshs386,330/=
- Less amount already paid.....Kshs16,756/=
- Balance due/award = Kshs369,574/=
- c. These awards are subject to statutory deductions.
- d. Costs of the cause to the claimants.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 19TH DAY OF DECEMBER, 2024.

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DAVID NDERITU

JUDGE

