



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 1177 OF 2018**  
**BETWEEN**  
**KENYA PRIVATE UNIVERSITIES WORKERS UNION.....CLAIMANT**  
**VERSUS**  
**KENYA METHODIST UNIVERSITY.....RESPONDENT**

*Rika J*

*Court Assistant: Emmanuel Kiprono*

*Rakoro & Company Advocates for the Claimant*

*Patrick Law Associates, Advocates for the Respondent.*

**JUDGMENT**

1. This Claim was filed on 11<sup>th</sup> July 2018.
2. It is brought by the Claimant Union, on behalf of its 15 Members, who were Employees of the Respondent University.
3. The Employees/ Grievants are: Phillip Meori Kadiko; Lydiah Muthoni Kanyaru; Angela Nuthoni Murungi; Clement Kariuki Kimani; Judith Wambui Njagi; Peter Njagi Nyaga; Naomi Kathure Muturi; Patrick Mwaura Waweru; Faith Gaichugi Mutuaruchu; Kiruhi Elizabeth Shigare; Eric Matu Waithaka; Martha Njeri Wanjiku; Miriam Muthoni David; Peter Kiragu Nyokabi; and Mawaeu Muindi Justus.
4. Their contracts were terminated on account of redundancy, on 22<sup>nd</sup> May 2017.
5. The Claimant avers that redundancy was unfair, and seeks Judgment against the Respondent, comprising salary arrears; compensation; notice; and severance.
6. It is further pleaded by the Claimant that redundancy was subject of other Claims filed by Grievants' 60 compatriots, in ELRC Cause Numbers 211 of 2017, 221 of 2017 and 222 of 2017 [Consolidated]. Judgment was delivered in favour of the 60 compatriots, on 28<sup>th</sup> July 2017.
7. The Respondent filed an Amended Statement of Response on 22<sup>nd</sup> July 2017. It is conceded that the Grievants were employed by the Respondent, and that they left employment on account of redundancy. It is pleaded that the decided Claims above, involving the Respondent and 60 other Employees, were materially different from the Cause herein, because the Respondent has already made steps towards settling the terminal dues to the present Grievants.
8. It was agreed by the Parties on 21<sup>st</sup> October 2021, that the Claim is considered and determined under Rule 21 of this Court's Procedure Rules, 2016.

**The Court Finds: -**

9. In the Judgment of 28<sup>th</sup> July 2017, the Court gave the following orders: -

- a. Declaration that the Respondent, in identifying the Claimants did not comply with the provisions of Section 40 [1] [c] of the Employment Act 2007, as the redundancy was unfair, irregular and un-procedural.
- b. The Respondent to pay each Claimant 6 months' gross salaries at the prevailing gross salary as at 31<sup>st</sup> July 2017 and to pay together with redundancy dues as per Section 40 of the Employment Act 2007, and to pay by 1<sup>st</sup> September 2017, failing interest at court rates to be payable thereon from the date of this Judgment, till full payment.
- c. In the alternative to [b] above, it is declared that the termination of the Claimant's employment by the Respondent on account of redundancy was unfair, irregular or un-procedural and hence null and void so that each Claimant shall continue in the service of the Respondent in the position held with full prevailing and agreed remuneration and benefits, as redundancy decision is hereby set aside as was unfair, irregular, un-procedural, null and void *ab initio*.
- d. The Respondent to exercise option between orders [b] and [c] above by filing and serving notice of such option by close of 31<sup>st</sup> July 2017, failing the Respondent to be deemed to have opted for order [c] and the Claimants to continue in employment by reporting on duty on 1<sup>st</sup> August 2017 in the usual manner.
- e. The Respondent to pay costs of the Suit.

10. The Consolidated Claims resulting in the Judgment above, were not materially different from the Claim herein. At the core of the dispute is the same redundancy, involving the same Employer, and the same group of Employees.

11. There is no reason why the Respondent did not endeavour to settle the current Claim, guided by the Judgment of the Court in the previous Claims.

12. The Court shall therefore adopt the Judgment of the Court in the previous Claims, as the Judgment in the present Claim, with necessary adjustments, resulting in the following **Orders**: -

- a. It is declared that termination was unfair.*
- b. The Respondent to pay each Grievant 6 months' gross salary as at 31<sup>st</sup> July 2017 in compensation for unfair termination.*
- c. The Respondent to pay each Grievant redundancy dues as per Section 40 of the Employment Act, less any dues received by the Grievants.*
- d. Costs to the Claimant.*

**Dated, signed and released to the Parties electronically, at Mombasa, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 3<sup>rd</sup> day of March 2022.**

**James Rika**

**Judge**