



Kenya Union of Commercial, Food and Allied Workers v Rumukia Farmers Cooperative Society Ltd (Cause E005 of 2020) [2022] KEELRC 13114 (KLR) (31 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 13114 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E005 OF 2020
DKN MARETE, J
OCTOBER 31, 2022**

**BETWEEN
KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT
AND
RUMUKIA FARMERS COOPERATIVE SOCIETY LTD RESPONDENT**

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated October 30, 2020. The issue in dispute is unfair/unlawful redundancy of 36 employees.
2. The Respondent in a Response to claim dated May 13, 2021 denies the claim and prays that it be dismissed with costs.
3. The claimant’s case is that the parties relate through a mutual agreement in the manner of a Recognition Agreement whereby several Collective Bargaining Agreements have been concluded. These culminate in the latest being for the period April 1, 2018 to March 20, 2020.
4. It is the claimant’s further case that the parties have continued to enjoy healthy industrial relations until the election into office of the current management committee in 2018.
5. This crisis and disagreement was a genesis in July 2019 when the chair of the respondents addressed the County Cooperative office informing them of the intended redundancy of 70 workers. This was never informed to the claimants and the Ministry of Labour, or at all.
6. This matter was later referred to conciliation but this failed due to the recalcitrance of the respondent;
7. It is her other case that on April 29, 2020 while the conciliation was on progress the respondent declared 36 workers redundant with effect from May 1, 2020. This was in total disregard of the conciliation



process before the conciliator. In the letters there were calculation of service gratuity but leave days and compensation was not included. See App HN 8 (a b c)-44 (a b c), all annexures to the claim.

8. The claimant avers that the Respondent contravene section 40 of the Labour [Employment Act 2007](#), where it states in

(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.

9. She prays as follows;

1. Rose Wairimu Murage 1st Grievant

- i. One month’s notice 41,680.00
 - ii. Service Gratuity 1,375,637.00
 - iii. Maximum Compensation for unlawful redundancy 500,160.00
- Total 1,917,477 .00

2. Charles Wachira 2nd Grievant

- i. One month’s notice 14,471.00
 - ii. Service Gratuity 549,163.00
 - iii. Maximum Compensation for unlawful redundancy 173,652.00
- Total 737,286.00

3. James Wachira Njoya 3rd Grievant

- i. One month’s notice 29,941.00
 - ii. Service Gratuity 1,137,738.00
 - iii. Maximum compensation for unlawful redundancy 359,292.00
- Total 1,526,971.00

4. Zachary Mwangi Macharia 4th Grievant

- i. One month’s notice 22,953.00
 - ii. Service Gratuity 838,182.0
 - iii. Maximum compensation for unlawful redundancy 275,436.0
- Total 1,136,571.00

5. Erastus Kiago 5th Grievant

- i. One month’s notice 14,471.00
- ii. 74 Off days 32,949.90
- iii. Service Gratuity 558,563.00



- iv. Maximum compensation for unlawful redundancy 173,652.00
- Total 779,635.00
- 6. Richard Gaichuhie Nginyi 6th Grievant
 - i. One month's notice 14,471.00
 - ii. 61 Off days 13,358.0
 - iii. Service Gratuity 529,490.00
 - iv. Maximum compensation for unlawful redundancy 173,652.00
 - Total 730,971.00
- 7. Aristus Kinyua Wachiuri 7th Grievant
 - i. One month's notice 22,953.00
 - ii. Service Gratuity 854,533.00
 - iii. Maximum compensation for unlawful redundancy 275,436.00
 - Total 1,152,922.00
- 8. Francis Kinyua Muturi 8th Grievant
 - i. One month's notice 14,471.00
 - ii. Service Gratuity 529,490.00
 - iii. Maximum compensation for unlawful redundancy 173,652.00
 - Total 717,613.00
- 9. Anthony Gachahi 9th Grievant
 - i. One month's notice
29,941.00
 - ii. Service Gratuity
1,129,174.00
 - iii. Maximum compensation for unlawful redundancy
359,292.00
 - Total
1,518,407.00
- 10. Charles Wanjau Wanderi 10th Grievant
 - i. One month's notice
14,471.00
 - ii. Service Gratuity
547,283.00



- iii. Maximum compensation for unlawful redundancy
173,652.00
Total
735,406.00
- 11. Robert Kimaru 11th Grievant
 - i. One month's notice
14,471.00
 - ii. Service Gratuity
486,234.00
 - iii. Maximum compensation for unlawful redundancy
173,652.00
Total
674,357.00
- 12. Joyce Muthoni Maina 12th Grievant
 - i. One month's notice
22,455.00
 - ii. Service Gratuity
845,430.00
 - iii. Maximum compensation for unlawful redundancy
269,460.00
Total
1,137,345.00
- 13. Patrick Muriithi 13th Grievant
 - i. One month's notice
21,956.00
 - ii. Service Gratuity
792,825.00
 - iii. Maximum compensation for unlawful redundancy
263,472.00
Total
1,078,256.00
- 14. John Githae 14th Grievant
 - (i) One month's notice 21,956.00



- (ii) Service Gratuity 632,340.00
 - (iii) Maximum compensation for unlawful redundancy 263,472.00
 - Total 917,768 .00
15. Bancy Wangu 15th Grievant
- i. One month's notice
 - ii. Annual leave 30 days
22,455.00
25,909.60
 - iii. Service Gratuity
845,430.00
 - iv. Maximum Compensation for unlawful redundancy
269,460.00
TOTAL 1,163,254.60
16. Anthony Ndegwa Wambugu 16th Grievant
- i. One month's notice
20,527.00
 - (ii) Service Gratuity
344,862.00
 - i. Maximum Compensation for unlawful redundancy
246,324.00
Total
611,713.00
17. Simon Maina Muturi 17th Grievant
- i. One month's notice
19,527,00
 - ii. Service Gratuity
328,062.00
 - iii. Maximum compensation for unlawful redundancy
234,324.00
Total
581,913.00
- (18) Joseph Gichine 18th Grievant
- i. One month's notice



12,582.00

ii. Service Gratuity

iii. Maximum compensation for unlawful redundancy

181,188.00

150,984.00

344,754.00

(19) Patrick Mwangi Kuria 19th Grievant

i. One month's notice

ii. 81 Off days

13,283.00

41,381.65

iii. Service Gratuity

239,094.00

iv. Maximum compensation for unlawful redundancy

199,236.00

Total 492,994.65

20. Stephen Njogu Kimaru 20th Grievant

i. One month's notice

12,582.00

ii. 20 Off days

7,743.00

iii. Service Gratuity

150,990.0

iv. Maximum compensation for unlawful redundancy

150,984.00

Total

322,299.00

21. Phillip Kamau Kimondo 21st Grievant

i. One month's notice

12,582.00

ii. Service Gratuity

120,792.00

iii. Maximum compensation for unlawful redundancy



150,984.00
Total 284,358.00

22. James Wahome 22nd Greivant
- i. One month's notice.....16,603.00
 - ii. Annual leave 30 days.....19,157.30
 - iii. Service Gratuity
159,396.00
 - iv. Maximum compensation for unlawful redundancy
199,236.00
Total.....394,392.30
23. Godwin Gichohi 23rd Grievant
- i. One month's notice.....7,874.00
 - ii. Off days 28 days..... 7,066.80
 - iii. Service Gratuity
59,058.00
 - iv. Maximum compensation for unlawful redundancy
94,488.00
Total.....168,486.80
24. Peter Maina Wangechi 24th Greivant
- i. One month's notice.....14,471.00
 - ii. Off days 60 days.....26,716.15
 - iii. Service Gratuity
558,563.00
 - iv. Maximum compensation for unlawful redundancy
173,652.00
Total..... 773,402.15.
25. John Kiruthu 25th Grievant
- i. One month's notice
12,582.00
 - ii. Service Gratuity
181,888.00
 - iii. Maximum compensation for unlawful redundancy



150,984.00

Total

345,454.00

26. Stephen Methu 26th Grievant

i. One month's notice

15,871.00

ii. Service Gratuity

529,490.00

iii. Maximum compensation for unlawful redundancy

190,452.00

Total

735,813.00

27. George Kamau Weru 27th Grievant

i. One month's notice

12,582.00

ii. Service Gratuity

301,980.00

iii. Maximum compensation for unlawful redundancy

150,984.00

Total

465,546.00

28. Dickson Mwaniki Kahiga 28th Grievant

i. One month's notice

12,582.00

ii. Service Gratuity

181,888.00

iii. Maximum compensation for unlawful redundancy

150,984.00

Total

345,454.00

29. John Mwihu 29th Grievant

i. One month's notice

17,850.00



- ii. Service Gratuity
171,360.00
 - iii. Maximum compensation for unlawful redundancy
214,200.00
 - Total
403,410.00
30. Gerald Theuri Githinji 30th Grievant
- i. One month's notice
12,582.00
 - ii. Off Days 30 Days
11,614.60
 - iii. Leave Days 30 days
11,614.60
 - iv. Service Gratuity
181,188.00
 - v. Maximum compensation for unlawful redundancy
150,984.00
 - Total
367,983.20
31. Bernard Gachago 31st Grievant
- i. One month's notice
12,582.00
 - ii. Service Gratuity
150,990.00
 - iii. Maximum compensation for unlawful redundancy
150,984.00
 - Total.....314,556.00
32. Stephen Maregwa 32nd Grievant
- i. One month's notice
12,582.00
 - ii. Service Gratuity
181,188.00
 - iii. Maximum compensation for unlawful redundancy



150,984.00
Total.....344,754.00

33. Albert Kibugu 33rd Grievant
- i. One month's notice.....22,953.00
 - ii. Off days 99 days.....69,920.65
 - iii. Leave Days 30 days.....26,484.20
 - iv. Service Gratuity
826,335.00
 - v. Maximum compensation for unlawful redundancy
275,436.00
- Total.....1,221,128.85
34. Elijah Nyingi Mathege 34th Grievant
- i. One month's notice..... 12,582.00
 - ii. 24 Off days.....9,291.70
 - iii. Service Gratuity
181,188.00
 - iv. Maximum compensation for unlawful redundancy
150,984.00
- Total
354,045.70
- 35 James Karoki 35th Grievant
- i. One month's notice.....12,582.00
 - ii. Annual leave 30 days.....14,517.70
 - iii. Service Gratuity
211,386.00
 - iv. Maximum compensation for unlawful redundancy
150,984.00
- Total
389,469.70
36. Samuel Githinji Thirima 36th Grievant
- i. One month's notice.....12,582.00
 - ii. 64 Off days.....24,630.15



- iii. Service Gratuity
120,792.00
- iv. Maximum compensation for unlawful redundancy
150,984.00
- Total
308,988.15

Cost of the suit to the Claimant

10. It is her case that the redundancy was carried out for legitimate reasons which were communicated to the employees.
11. It is her further case that redundancy has already taken place and that the remedy for reinstatement is not available to the parties. This is not tenable in law and fact.
12. The issues for termination are therefore;
 1. Whether the termination of the employment of the 76 grievants was wrongful, unfair and unlawful.
 2. Whether the claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
13. The 1st issue for determination is whether the termination of the employment of the 36 grievants was wrongful, unfair and unlawful. The claimant in her written submissions dated 6th May, 2022 reiterate a claim and narrates a case of an unlawful redundancy and therefore unlawful termination of the employment of the grievants by the Respondent. She therefore prays for inter alia reinstatement without loss of benefits. This is beside a withdrawal or nullification of the letters of redundancy dated April 29, 2020.
14. The claimant faults the redundancy process for non-compliance with section 40 of the *Employment Act, 2007* on redundancy. It is her case and submission that the Respondent did not issue the requisite notices to the union or even the grievants, or at all. This dements the process and renders it unlawful.
15. The claimant in her written submissions dated 6th May, 2022 reiterates her case of unlawful and unprocedural redundancy on the part of the Respondent to the hurt and detriment of the workers/ grievants. On this she seeks to rely on the authority of Section 40 (a) and (b) of the *Employment Act, 2007* as follows;
 - 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”
 - 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.
15. That the thirty-six employees were unlawfully declared redundant without the right procedure being followed.



16. That the redundancy letters issued to the thirty-six employees were not copied to the claimant or the Labour officer which was contrary to Section 44 of the [Employment Act, 2007](#).
 18. That the Respondent acted in total disregard of [Employment Act, 2007](#) and the parties' Collective Bargaining Agreement.
 19. That the criteria of first in last out was not applied during the redundancy of the thirty six employees.
 20. That the thirty six employees who were declared redundant were not issued with the required notice of one month as per the law.
16. The Respondent did not avail any written submissions in answer. her case was one of denial of the claim and justification of the redundancy process. This however remains just that, a denial. She does not offer any evidence to either controvert the claim or support her case for lawful termination of employment by way of redundancy. I therefore find a case of unlawful termination of employment of the grievants by the Respondent and hold as such.
 17. The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is. Having succeeded on a case of unlawful termination of employment, she becomes entitled to the relief sought.
 18. I am therefore inclined to allow the claim and order relief as follows;
 1. Rose Wairimu Murange
 - i. One month's notice
41,680.00
 - ii. Service Gratuity
1,375,637.00
 - iii. Six (6) months Compensation for unlawful redundancy
250,080.00
Total 1,667,397 .00
 2. Charles Wachira
 - i. One month's notice
14,471.00
 - ii. Service Gratuity
549,163.00
 - iii. Six (6) months Compensation for unlawful redundancy
86,826.00
Total 650,460.00
 3. James Wachira Njoya
 - i. One month's notice
29,941.00



- ii. Service Gratuity
1,137,738.00
 - iii. Six (6) months compensation for unlawful redundancy
179,646.00
 - Total 1,347,325.00
- 4. Zachary Mwangi Macharia
 - i. One month's notice
22,953.00
 - ii. Service Gratuity
 - iii. Six (6) months compensation for unlawful redundancy
838,182.0
 - 137,718.0
 - Total 998,853.00
- 5. Erastus Kiago
 - i. One month's notice..... 14,471.00
 - ii. 74 Off days.....32,949.90
 - iii. Service Gratuity
558,563.00
 - iv. Six (6) months compensation for unlawful redundancy
86,826.00
 - Total 692,809.90
- 6. Richard Gaichuhie Nginyi
 - i. One month's notice
14,471.00
 - ii. 61 Off days
13,358.0
 - iii. Service Gratuity
529,490.00
 - iv. Six (6) months compensation for unlawful redundancy
86,826.00
 - Total 644,145.00
- 7. Aristus Kinyua Wachiuri



- i. One month's notice ... 22,953.00
 - ii. Service Gratuity.....854,533.00
 - iii. Six (6) months compensation for unlawful redundancy...137,718.00
 - Total.....1,015,204.00
- 8. Francis Kinyua Muturi
 - i. One month's notice....14,471.00
 - ii. Service Gratuity.....529,490.00
 - iii. Six (6) months compensation for unlawful redundancy.. 86,826.00
 - Total....630,787.00
- 9. Anthony Gachahi
 - i. One month's notice...29,941.00
 - ii. Service Gratuity.... 1,129,174.00
 - iii. Six (6) months compensation for unlawful redundancy....179,646.00
 - Total.....1,338,761.00
- 10. Charles Wanjau Wanderi
 - i. One month's notice.....14,471.00
 - ii. Service Gratuity.....547,283.00
 - iii. Six (6) months compensation for unlawful redundancy....86,826.00
 - Total...648,580.00
- 11. Robert Kimaru
 - i. One month's notice....14,471.00
 - ii. Service Gratuity.....486,234.00
 - iii. Six (6) months compensation for unlawful redundancy....86,826.00
 - Total.....587,531.00
- 12. Joyce Muthoni Maina
 - i. One month's notice.....22,455.00
 - ii. Service Gratuity....845,430.00
 - iii. Six (6) months compensation for unlawful redundancy...134,730.00
 - Total....1,002,615.00
- 13. Patrick Muriithi
 - i. One month's notice.....21,956.00
 - ii. Service Gratuity.....792,825.00



- iii. Six (6) months compensation for unlawful redundancy.....131,736.00
 - Total.....946,517.00
- 14. John Githae
 - (i) One month's notice..... 21,956.00
 - (ii) Service Gratuity632,340.00
 - (iii) six (6) months compensation for unlawful redundancy ...131,736.00
 - Total786,032 .00
- 15. Bancy Wangu
 - i. One month's notice..... 22,455.00
 - ii. Annual leave 30 days.....25,909.60
 - iii. Service Gratuity.....845,430.00
 - iv. Six (6) months Compensation for unlawful redundancy...134,730.00
 - Total 1,028,524.60
- 16. Anthony Ndegwa Wambugu
 - ii. One month's notice..... 20,527.00
 - (ii) Service Gratuity.....344,862.00
 - iii. Six (6) months Compensation for unlawful redundancy..123,162.00
 - Total.....488,551.00
- 17. Simon Maina Muturi
 - i. One month's notice.....19,527,00
 - ii. Service Gratuity.....328,062.00
 - iii. Six (6) compensation for unlawful redundancy.....117,162.00
 - Total....464,751.00
- (18) Joseph Gichine
 - i. One month's notice....12,582.00
 - ii. Service Gratuity.....181,188.00
 - iii. Six (6)months compensation for unlawful redundancy....75,492.00
 - Total ...269,262.00
- 19. Patrick Mwangi Kuria
 - i. One month's notice.....13,283.00
 - ii. 81 Off days....41,381.65
 - iii. Service Gratuity.....239,094.00



- iv. Six (6) months compensation for unlawful redundancy...132,836.00
Total...426,594.65
- 20. Stephen Njogu Kimaru
 - i. One month's notice...12,582.00
 - ii. 20 Off days.....7,743.00
 - iii. Service Gratuity....150,990.0
 - iv. Six (6) compensation for unlawful redundancy...75,492.00
Total....246,807.00
- 21. Phillip Kamau Kimondo
 - i. One month's notice....12,582.00
 - ii. Service Gratuity.. 120,792.00
 - iii. Six (6) months compensation for unlawful redundancy....75,492.00
Total....208,866.00
- 22. James Wahome
 - i. One month's notice.....16,603.00
 - ii. Annual leave 30 days.....19,157.30
 - iii. Service Gratuity.....159,396.00
 - iv. Six (6) months compensation for unlawful redundancy....166,036.00
Total....361,192.30
- 23. Godwin Gichohi
 - i. One month's notice.....7,874.00
 - ii. Off days 28 days.....7,066.80
 - iii. Service Gratuity.....59,058.00
 - iv. Six (6) months compensation for unlawful redundancy....47,244.00
Total.....121,242.80
- 24. Peter Maina Wangechi
 - i. One month's notice.... 14,471.00
 - ii. Off days 60 days.....26,716.15
 - iii. Service Gratuity.....558,563.00
 - iv. Six (6) compensation for unlawful redundancy...86,826.00
Total..... 686,576.15
- 25. John Kiruthu



- i. One month's notice.....12,582.00
 - ii. Service Gratuity.....181,888.00
 - iii. Six (6) compensation for unlawful redundancy.....75,492.00
 - Total.....269,962.00
- 26. Stephen Methu
 - i. One month's notice.....15,871.00
 - ii. Service Gratuity.....529,490.00
 - iii. Six (6) months compensation for unlawful redundancy...95,226.00
 - Total.....640,587.00
- 27. George Kamau Weru
 - i. One month's notice.....12,582.00
 - ii. Service Gratuity.....301,980.00
 - iii. Six (6) compensation for unlawful redundancy...75,492.00
 - Total.....390,054.00
- 28. Dickson Mwaniki Kahiga
 - i. One month's notice.....12,582.00
 - ii. Service Gratuity.....181,888.00
 - iii. Six (6) months compensation for unlawful redundancy..... 75,492.00
 - Total.....269,962.00
- 29. John Mwihi
 - i. One month's notice.....17,850.00
 - ii. Service Gratuity..... 171,360.00
 - iii. Six (6) months compensation for unlawful redundancy.....107,100
 - Total.....296,310.00
- 30. Gerald Theuri Githinji
 - i. One month's notice.....12,582.00
 - ii. Off Days 30 Days.....11,614.60
 - iii. Leave Days 30 days.....11,614.60
 - iv. Service Gratuity..... 181,188.00
 - v. Six (6) months compensation for unlawful redundancy.....75,492.00
 - Total.....292,491.20
- 31. Bernard Gachago



- iv. One month's notice.....12,582.00
 - v. Service Gratuity.....150,990.00
 - vi. Six (6) months compensation for unlawful redundancy.....75,492.00
 - Total 239,064.00
32. Stephen Maregwa
- i. One month's notice.....12,582.00
 - ii. Service Gratuity.....181,188.00
 - iii. Six (6) months compensation for unlawful redundancy...75,492.00
 - Total 269,262.00
33. Albert Kibugu
- i. One month's notice.....22,953.00
 - ii. Off days 99 days.....69,920.65
 - iii. Leave Days 30 days.....26,484.20
 - iv. Service Gratuity....826,335.00
 - v. Six (6) months compensation for unlawful redundancy...137,718.00
 - Total..... 1,083,410.85
34. Elijah Nyingi Mathege
- i. One month's notice..... 12,582.00
 - ii. 24 Off days.....9,291.70
 - iv. Service Gratuity.....181,188.00
 - v. Six (6) months compensation for unlawful redundancy... 75,492.00
 - Total.....278,553.70
- . James Karoki
- i. One month's notice..... 12,582.00
 - ii. Annual leave 30 days.....14,517.70
 - iii. Service Gratuity.....211,386.00
 - iv. Six (6) months compensation for unlawful redundancy....75,492.00
 - Total.....313,977.70
36. Samuel Githinji Thirima
- i. One month's notice.... 12,582.00
 - ii. 64 Off days..... 24,630.15
 - iii. Service Gratuity.....120,792.00



iv. Six (6) months salary as compensation for unlawful redundancy.....75,492.00

Total.....233,496.15

Total of claim.....Kshs.21,836,515.00

ii. The costs of the claim shall be borne by the Respondent.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

Miss Macharia for the Claimant Union.

Mr. Waweru Macharia instructed by Waweru Macharia & Co.Advocates for the Respondent.

