A NEW ORGANOGRAM IS NOT ENOUGH

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INTRODUCTION

Organizational restructuring remains an essential tool through which employers respond to evolving operational, financial, and commercial circumstances. However, while employers retain the managerial prerogative to restructure their businesses, Kenyan courts continue to emphasize that a restructuring exercise does not, without more, justify declaring employees redundant. Recent jurisprudence from the Employment and Labour Relations Court (the **ELRC)** underscores that an employer must establish a genuine and objectively justifiable operational basis for any redundancy and strictly comply with both the substantive and procedural requirements of the Employment Act, 2007 (the Act).

In a recent decision, ***Otega v Nokia Solutions and Network Branch Operations Branch OY, Kenya [2026] KEELRC 1754 (KLR***), the ELRC considered the legal requirements applicable to an organizational restructuring exercise which resulted in the claimant's position being declared redundant.

BACKGROUND

On or about 15th April 2013, Byron Otega, the Claimant, was employed by the Respondent, Nokia Solutions and Network Branch OY, Kenya, as Customer Solution Manager based in Nairobi. Sometime in July 2021, the Respondent was awarded a contract to rollout a new network for Safaricom in Ethiopia, and the Claimant was requested join the team assigned to the Ethiopia project. With effect from 1st November 2021, the Claimant was appointed as Account Manager – Network Infrastructure (NI), (Customer Experience (CX) Ethiopia, working in Ethiopia but with home office in Kenya.

Sometime in February 2023, the Claimant was informed by his line manager that there were plans to localize his role. Subsequently, on 8th May 2023, he was invited to a meeting with the Human Resource Manager, during which he was informed of an intention to declare his role in Ethiopia redundant, as the company was carrying out a consolidation of its businesses. On or about 9th May 2023, he was served with a notice of intended redundancy. Before the redundancy, the Claimant had raised grievances against his line manager. He therefore contended that the redundancy was not justified, but one actuated with retaliation and discrimination.

The Claimant further claimed that his position of Account Manager NI was advertised. He then resigned, applied and attended two (2) interviews. He, however, was notified by the Human Resource Manager that another candidate was appointed to the role, and he was instructed to handover to him. The appointee happened to be his counterpart for Safaricom Kenya.

On or about 8th June 2023, the Claimant was served with a letter formally terminating his employment on account of redundancy, effective from 31st July 2023. He maintained that the termination was premeditated, unfair, malicious, unjustified, and unprocedural because there was no valid reason for the termination of his employment.
The Respondent maintained that the Claimant was dismissed on account of redundancy, and the justification was that there was a reorganization whereby two (2) positions were collapsed into one. The Respondent further asserted that proper procedure was followed as notice was served on the labour office and the affected staff, consultations were also conducted and the staff were given a chance to apply for

alternative positions. The Respondent however failed to adequately justify the recruitment of persons into roles similar to that held by the Claimant, barely a month before the notification of localization of the Claimant's role.

DETERMINATION

The principal issue before the ELRC was whether the termination of the Claimant's employment on account of redundancy was substantively justified and procedurally fair.
Accordingly, the Court's determination will be discussed in two main limbs:

- the substantive justification for the redundancy; and
- the procedural fairness of the termination process.

Whether there was a valid/substantive reason for the restructure and redundancy

In its reasoning, the ELRC reiterated that redundancy is a valid reason for terminating employment. Even so, the ELRC emphasized that while restructuring is a prerogative of the employer, the law places a heavy burden on the employer to justify any termination of employment.

In its determination, the ELRC observed that before an employer can lawfully terminate employment on account of redundancy, it must have a valid reason related to operational requirements of the enterprise or company. To quote the court:
"It is not enough to cite restructuring or reorganization. The employer must show evidence that he has genuinely undertaken business restructuring or adopted new technology or made some other genuine commercial decision that has rendered the services of his employee superfluous."

Accordingly, an employer must do more than merely assert that a restructuring has taken place. It must be shown that the employer's commercial decision culminated in abolition of roles, merger of roles, adoption of new technology or closure of the business or departments or any other operational change which rendered the affected employee's services superfluous.

On the facts of the case, the ELRC found that there was no difference in the job description of the Claimant and the roles advertised by the Respondent. The Claimant's services in the company were thus not deemed superfluous given that the role of Account Manager NI in Ethiopia had not been abolished and that indeed a couple of Ethiopian Account Managers had been appointed just before the impugned redundancy process.

Ultimately, the ELRC held that the Respondent failed to prove on a balance of probability that the reorganization of its business led to abolition of the Claimant's role and rendered his services superfluous.

Whether the redundancy process was procedurally fair

In determining whether the redundancy process was fair, the ELRC referred to Section 40 of the Act and ILO Convention No. 158. The Court emphasized that an employer must comply with the prescribed procedural requirements, including issuing the requisite notices, undertaking genuine consultations, applying objective and fair selection criteria, and issuing formal termination letters to the affected employees.
In addition to finding that there was no substantive reason for the redundancy, the

ELRC further faulted the procedure adopted by the Respondent. In particular, the ELRC found that the Respondent had failed to conduct genuine consultations and find alternative measures to the redundancy before proceeding with the termination. It was therefore held that the Respondent did not prove that there was a fair selection conducted before identifying the Claimant as the person to exit on redundancy.

CONCLUSION

Otega v Nokia Solutions and Network Branch Operations Branch OY, Kenya serves as a timely reminder that a redundancy process must be driven by genuine business necessity rather than form. A revised organogram or the deletion of positions, without evidence of the operational, financial, structural or commercial reasons underpinning the restructuring, will not by itself justify a redundancy. Ultimately, a lawful redundancy requires more than a commercial decision to restructure—it demands substantive justification, procedural fairness, and evidence that the redundancy is genuine.

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