

2026 OCTOBER | Employment

Court of Appeal Upholds Business Restructuring as a Valid Reason for Redundancy

[Macharia v Standard Chartered Bank Kenya Ltd \[2026\] KECA 1276 \(KLR\)](#)

1. Background

- 1.1. The Appellant, Charles John Macharia, was employed by Standard Chartered Bank Kenya Limited as a Relationship Manager with effect from 15 May 2015. He alleged that, on diverse dates between 2018 and 2020, he was subjected to harassment and discrimination by his immediate supervisor.
- 1.2. According to the Appellant, the harassment by his immediate supervisor led to disciplinary proceedings against him and the subsequent termination of his employment on 19 December 2019. He successfully appealed against the termination through the Bank's internal procedures and was reinstated on 17 February 2020. His reinstatement letter also served as a final warning.
- 1.3. Following his reinstatement, the appellant was informed of a pending retrenchment necessitated by the Bank's restructuring. He was required to apply for a newly created position and undergo a performance-based interview. He objected to this on account of his pending claim before the ELRC.
- 1.4. The Bank subsequently clarified that the restructuring was an organisational exercise unrelated to the individual concerns previously raised with the appellant. On the basis of that clarification, he applied for the new roles but was unsuccessful. His employment was subsequently terminated on account of redundancy.
- 1.5. The appellant challenged the redundancy as not genuine and the termination as unlawful and unprocedural. He also alleged that his termination was based on discrimination and harassment by his supervisor.
- 1.6. In its judgment dated 15 March 2024, the ELRC found that there was a genuine redundancy situation and that the termination was lawful.
- 1.7. Aggrieved by that decision, the appellant appealed to the Court of Appeal. He contended, among other things, that the redundancy was not genuine and that the Bank had failed to comply with the mandatory procedural requirements under sections 40, 41, 43 and 45 of the Employment Act. He further contended that the Last In First Out ("LIFO") principle had been ignored and that the redundancy took place when the employer-employee relationship was severely strained, which, in his view,

demonstrated that the redundancy was not genuine.

2. Court of Appeal's Determination

2.1. The Court of Appeal identified four issues for determination:

- Whether the redundancy undertaken by the Bank was genuine.
- Whether the termination of the appellant's employment was procedural and lawful.
- Whether the ELRC had ignored material evidence relating to the appellant's alleged victimisation.
- Whether the ELRC had erred in finding that the appellant had abandoned reliefs which he had pleaded and fully argued.

2.2. The Court considered the first two issues together because they were intertwined and held as follows:

- Termination of a contract on account of redundancy is governed by section 40 of the Employment Act. Section 40(1) sets out the procedure an employer must follow when terminating employment on that ground.
 - Where an employee is not a member of a trade union, section 40(1)(b) requires the employer to notify the employee personally in writing and the labour officer. Section 40(1)(c) further requires the employer, when selecting employees for redundancy, to have due regard to seniority in time and to the skill, ability and reliability of each employee in the particular class affected.
- Section 2 of the Act defines a "labour officer" as "a person appointed as the Commissioner of Labour, a senior Deputy Commissioner of Labour, a Deputy Commissioner of Labour, an Assistant Commissioner of Labour, a Chief Industrial Relations Officer, a Deputy Chief Industrial Relations Officer, a Senior Labour Officer, and Industrial Relations Officer or a Labour Officer."
 - Section 2 further 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 an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment."
 - The parties did not dispute that the Bank had given notice of redundancy to the appellant and the labour officer. The appellant's contention was that the Bank had issued the notice to the "labour officer in charge of the area" rather than the "Commissioner of Labour." The Court found that sending the notice to the labour officer instead of the Commissioner of Labour was not a fatal omission so as to nullify the notice.
 - The redundancy arose from the Bank's restructuring exercise, which the Bank had communicated to all employees, including the appellant. In response to his queries, the Bank clarified in an email dated 7 September 2020 that the restructuring was an organisational exercise unrelated to any individual concerns previously raised with him. Following that clarification, the appellant applied for the new roles.

- g) The Court cited its decision in *Kenya Airways v Aviation Allied Workers Union Kenya & 3 Others* [2014] KECA 403 (KLR) where it was held as follows:

“Redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and termination is in accordance with fair procedure. As section 43(2) provides, the test of what is a fair reason is subjective. The phrase ‘based on operational requirements of the employer’ must be construed in the context of the statutory definition of redundancy. What the phrase means...is that while there may be underlying cases leading to a true redundancy situation, such as reorganization, the employer must nevertheless show that the termination is attributable to the redundancy – that is that the services of the employee has been rendered superfluous or that redundancy has resulted in abolition of office, job or loss of employment.”

- h) The Court also cited with approval the decision in *Aoraki Corporations Limited v Collin Keith McGavin*, Civil Appeal No. 2 of 1997 [1998] 2 NZLR 278, where the Court of Appeal of New Zealand stated:

“Redundancy is a special situation. The employees have done no wrong. It is simply that in the circumstances the employer faces, their jobs have disappeared and they are considered surplus to the needs of the business. Where it is decided as a matter of commercial judgment that there are too many employees in the particular area or overall, it is for the employer as a matter of commercial judgment to decide on the strategy to be adopted in the restructuring exercise and what position or positions should be dispensed with in the implementation of that

strategy and whether an employee whose job has disappeared should be offered another position elsewhere in the business.”

- i) The Court found that the Bank had explained its reason for restructuring: to amalgamate its Global Banking and Commercial Banking units. The merger would result in scrapping some positions. In particular, the Bank reduced the number of Relationship Manager positions from thirteen to four and gave all employees an opportunity to apply and compete for the available positions. The Court observed that the restructuring involved amalgamating the two business units, abolishing some roles and reconfiguring others. In the Relationship Manager role, the Bank declared nine employees redundant and retained four.
- j) The Court held that, as long as the Bank genuinely believed that a redundancy situation existed, termination on that ground was justified, as the restructuring was a business decision. It was therefore satisfied that there was a valid, justified and genuine reason for the redundancy.
- k) On procedural fairness, the Court found that the Bank had complied with the relevant provisions of the law. The Bank had given staff notice of the pending retrenchment and redundancy, provided an opportunity for all affected employees to participate in the new recruitment process and notified them of the selection criteria, which involved interviews. In addressing the appellant’s contention that the Bank had ignored the Last In First Out principle, the Court found that interviewing applicants did not depart significantly from the statutory criteria of

seniority in time, skill, ability and reliability under section 40(1)(c).

- l) The Appellant had not proved his allegation that his termination arose from discrimination and harassment by his supervisor. The Court considered that the Bank's explanation of the restructuring and the opportunity it gave him to participate in the interviews debunked that allegation. It therefore found that the Bank had followed a fair procedure in terminating his services.
- m) Section 41 did not apply because the termination under consideration concerned redundancy. The initial disciplinary termination had been overtaken by events when the appellant appealed against the disciplinary committee's decision and the Bank reinstated him.
- n) On the appellant's contention that the ELRC had ignored material evidence relating to his alleged victimisation, the Court was satisfied that the ELRC had considered the evidence before it in reaching its determination.
- o) In the end, the Court found no reason to interfere with the ELRC's dismissal of the claim. It dismissed the appeal and ordered each party to bear its own costs.

About Mutie Advocates

Mutie Advocates is a Nairobi-based law firm with a strong focus on legal compliance, data protection and privacy law, complemented by a broad range of legal services. Built on a foundation of legal excellence, the firm provides expert support in corporate and commercial law, employment and labour relations, intellectual property, litigation, dispute resolution and regulatory compliance. Known for its practical and client-centered approach, Mutie Advocates helps organizations navigate complex legal and regulatory landscapes through data audits, policy development and strategic legal advisory. The firm serves a diverse clientele, including individuals, corporates, non-governmental organizations and public institutions, delivering timely, effective and solution-oriented legal services.

Website: www.mutie-advocate.com

Phone: +254 768 042 180

E-mail: info@mutieadvocates.com

Address: Assi Centre, School Lane, Westlands

P O Box 211-00621, Nairobi

Disclaimer:

The views expressed in this article are for general guidance and should not be interpreted as legal advice. Mutie Advocates shall not be held liable for any reliance placed on this information without formal legal consultation. Always seek professional advice tailored to your situation.