



“THE NEXT STEP FOR TRADE UNIONS HANDLING REDUNDANCY IN KENYA!”

An Economic Paper for Decision Making in Trade Unions in Kenya

By

OWIDHI GEORGE OTIENO

ECONOMIST

CENTRAL ORGANIZATION OF TRADE UNIONS –COTU (K)

JANUARY 2017

Table of Contents

1.0 INTRODUCTION	5
2.0 ANALYSIS OF KENYA'S ECONOMIC AND EMPLOYMENT GROWTH.....	7
3.0 REDUNDANCY IN KENYA	10
3.1 Introduction	10
3.2 Some Examples of workers declared redundant in 2016 in Kenya.	11
3.3 Due Legal Procedures in the event of Redundancy	12
3.4 Perspectives of the International Labour Organization (ILO) on Redundancy	13
4. REDUNDANCY CASES HANDLED BY THE COURTS IN KENYA.....	14
5. PROPOSED POLICY INTERVENTIONS BY THE TRADE UNIONS IN CASE OF REDUNDANCY	16
6. ANALYSIS OF CONSUMER PRICE INDICES AND INFLATION RATES FOR DECEMBER 2016.....	18
6.1 Brief Analysis of the Consumer Price Indices for the period November 2015- December 2016	18
6.2 Brief Analysis of the Inflation Rates for the period November 2015- December 2016	21
7.0 CONCLUSION	24
REFERENCES	25

List of Tables

Table 1: Growth of GDP and GDP values and Employment creation in Kenya for the period 2010 to 2015	7
Table 2: Some workers declared redundant in Kenya in 2016	11
Table 3: CPIs for Kenya for the period November 2015 - December 2016	19
Table 4: Kenya's Inflation rates for the period November 2015- December 2016.....	22

Table of Figures

Figure 1: Kenya's GDP and Employment Creation growth rates, 2010-2015.	8
Figure 2: Graph of Kenya's CPIs for the period June 2015 - July 2016	20
Figure 3: Kenya's Inflation rates for the period August 2015 - September 2016	23

1.0 INTRODUCTION

The current lags and labour market decent work deficits places trade unions at the center stage of a policy struggle. Globally, policy formulation and implementation rests in the hands of the government. However, research has shown that if the government policy is in line with the private sector and civil society development plans and prospects, then there is high likelihood of attaining larger average economic growth (Blejer and Khan, 1984, Khan and Kumar, 1987).

Overtime, trade unions have actively engaged policy making bodies so as to influence the outcomes for the sole benefit of the workers. From the 2030 Global Sustainable Development Goals to the African Agenda 2063 to the Kenya Vision 2030, trade unions have had greater value addition to policy. However, with these tremendous contributions to policy, there still exist major decent work gaps and/or deficits that characterize the labour market lowering the dignity of the workers.

In particular, poor quality and limited employment opportunities, frequent abuse of the fundamental basic rights and freedoms of workers, weakening social dialogue frameworks and institutions and poor access to social protection add to the stock of decent work deficit in Kenya.

These labour market shortcomings speak doom to the key mandate of the Central Organization of Trade Unions, COTU (K): *to protect, promote and uphold decent work in Kenya through constant review of employment situation and opportunities in Kenya; promoting effective and consultative Social Dialogue; Enhancing Social protection while ensuring that the fundamental rights and freedoms of workers are upheld.*

In the last few years, Kenya has faced numerous challenges in the labour market. Notably is the ballooning increase in redundancies in which case, several employees lose their jobs. This is a suicidal exercise to the trade unions as they lose members through such processes. These members as well face massive social and economic challenges having lost their jobs.

This paper seeks to analyze the cases of redundancies in Kenya while providing policy propositions on effective ways of handling redundancy in line with the legal frameworks. The next section gives the analysis of Kenya's economic and employment growth over the last five years; analysis of redundancy in Kenya in section 3. Part 4 looks at some cases of redundancy as handled by the courts in Kenya, while part five provides the policy options available for the trade unions in dealing with redundancy. The final section (section 6) presents the changes in Consumer Price Indices and Inflation rates over the past 14 months to give a glimpse of how the workers' cost of living has deteriorated while section seven concludes the paper.

2.0 ANALYSIS OF KENYA'S ECONOMIC AND EMPLOYMENT GROWTH

Kenya's economy grew by 5.6 per cent in 2015 compared to a growth of 5.4 per cent in 2014 (Republic of Kenya, 2016). Such economic improvements were supported by strong macroeconomic environment and greater sectorial improvements in Agriculture, real estate, construction, finance and insurance.

Ideally, improvements in economic performance brings with it improvements in the labor market performance; however, Kenya's case is a mismatch. Kenya's labor market has been characterized by high levels of multinational corporation exits and job losses on the basis of unfavorable business environment. In fact, economists are still burning their night oil in order to find out why Kenya's economic prospectus is promising yet joblessness is on the rise. A cursory examination of Kenya's performance over the last five years is tabulated as follows.

Table 1: Growth of GDP and GDP values and Employment creation in Kenya for the period 2010 to 2015

Year	GDP at Market prices (Ksh. Trillion)	Real GDP Growth (%)	New jobs Created (thousands)			Employment Growth rate (%)
			Formal	Informal	Total	
2010	2.56	5.6	62.6	440.9	503.1	4.8
2011	3.73	4.4	74.2	445.9	520.1	4.7
2012	4.26	4.6	68.0	591.4	659.4	5.5
2013	4.75	5.7	116.8	626.0	742.8	5.8
2014	5.40	5.3	106.3	693.4	799.7	5.9
2015	6.22	5.6	128.6	713.6	841.6	5.9

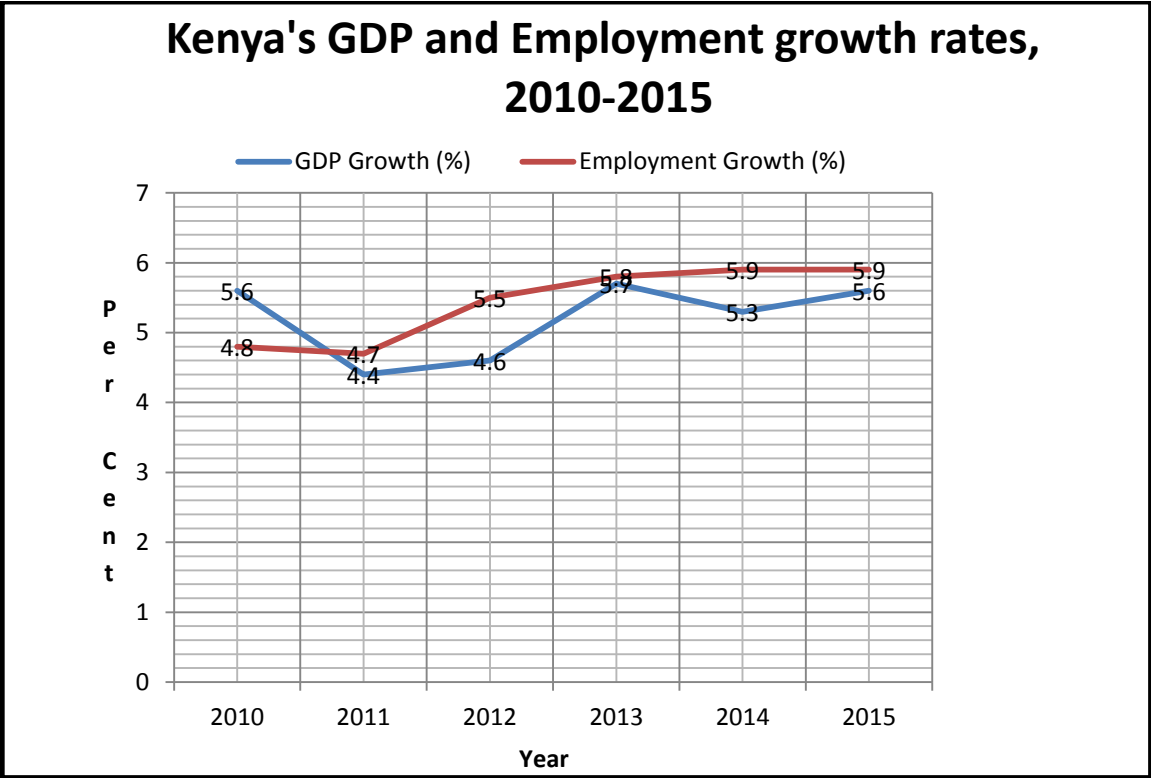
Source: Republic of Kenya, Economic Surveys (Various)

Table 1 show that the highest rate of economic growth over the last 5 years is 5.7 per cent experienced in 2013 and the lowest is 4.4 per cent in 2011. Over the same period, the least number of jobs created was 503.1 thousand in 2010 while the highest number

of jobs created was 841.6 thousand in 2015. It is as well important to note that table 1 shows that the informal sector creates at least 85 per cent of new jobs annually, compared to the formal (modern) sector that creates limited new jobs per year (at most 15%). Focusing our analysis on how GDP and Employment growth relates, we present the data in figure 1.

Figure 1 shows the trend of GDP and Employment creation growth rates in Kenya over the last five years.

Figure 1: Kenya’s GDP and Employment Creation growth rates, 2010-2015.



Source: Author’s construction based on data from Economic Surveys (Various)

As presented in figure 1, a lower economic growth results to lower number of jobs created by the economy, though not proportionately. This is drawn from between 2010 and 2013. We can as well learn that Kenya's economic growth is not consistent, implying that macroeconomic variables grow at different rates over a period of time. Moreover, Kenya continues to create more jobs, though in the informal sector.

We can partly justify the mismatch between economic performance based on figure 1, that *more jobs are created in the informal sector where lower levels of productivity is high as well as other decent work deficits including lack of social protection, limited social dialogue and very little regard to the fundamental basic rights of the workers. In this case, the marginal returns to job creation are less than the marginal benefits to economic growth.* This brings the mismatch, making Kenya a jobless economy.

Given, the foregoing analysis, the next section focuses on redundancy as a major outcome of poor economic outlook and a threat to trade unionism.

3.0 REDUNDANCY IN KENYA

3.1 Introduction

The Employment Act 2007 defines redundancy as “*The loss of employment, occupation, job or carrier by involving means through no fault of an employee, involving termination of employment at the initiative of the employer, where services of an employee are superfluous and the practices commonly known as abolition of offices, job, or occupation and loss of employment*” (Republic of Kenya, 2007).

Over the last few years, Kenya has been characterized by massive job losses due to redundancy. This has been witnessed across the sectors of the economy sending messages of doom to the trade unions that lose their members through this process. This notwithstanding, the economic losses incurred by the affected workers is insurmountable.

Some of the most employment disputes witnessed in Kenya include Termination/Summary Dismissal; Breach of Employment Contract Terms; Conflict with trade unions; Work injury, Discrimination; Sexual Harassment; Service Pay; Termination for Cause: Reason or no Reason; Suspension and waiver of claims (*Maema, 2016*).

On the other hand, the termination options available in a disputed employment relation include Resignation; Termination by employers; Summary dismissal, Redundancy; End of Probation/Confirmation of employment, Mutual separation. End of Fixed term Contracts, and Retirement (*Maema, 2016*)

In the above termination options, Kenya has suffered seriously over the last 5 years due to increasing choice of redundancy as the most preferred choice of termination of employment contracts. This has raised a lot of concerns among trade unions as and other social economic players. The trade unions lose large mass of their members in the case of redundancy declarations. On the other hand, other economic players suffer from redundancy on the basis of decreasing welfare of workers who have lost their job thus lost income to sustain their families. In fact, redundancy is a decent job “crime”.

3.2 Some Examples of workers declared redundant in 2016 in Kenya.

Table 2: Some workers declared redundant in Kenya in 2016

Company/Institutions that have declared their employees redundant	No. of Workers affected/deemed affected
Standard Chartered Bank	300
Sidian Bank	108
Royal Media Services	100
First Community Bank	106
Sameer Africa	600
National Bank Kenya Commercial Bank Barclays Bank & Cooperative Bank	1,000
Equity Bank	1,000
Civil Servants	40,000
Cocacola	80
Airtel	60
China Road and Bridge Corporation	109
East Africa Portland Cement	1,000
Ericson	500
Kenya Airways	80
Finlays Horticultural Kenya Ltd	14
Oserian Devt. Company . Ltd	1,427
Zena Roses Kenya Ltd	214
Total	46,698

Source: Kenyan dailies

3.3 Due Legal Procedures in the event of Redundancy

The Employment Act 2007 Section 40 provides the following as the due steps and requirements of carrying out a lawful redundancy:

- i. At least one month's consultation with the affected employee (through their trade union) before the due date of the redundancy.
- ii. At least one month notice of termination issued to the employees (through the trade union) informing them of the intended termination on the basis of redundancy. This is the **First Notice** which should be issued upon conclusion of the consultations in (i) above.
- iii. While issuing the First Notice, the Labour Officer of the area should as well be issued with one month notice before the intended redundancy is executed
- iv. After the first notice, a **Second Notice** is issued. This is the actual letter of redundancy. Alternatively the employer may pay the salary in lieu of this notice (Maema, 2016)
- v. Finally, upon the due conclusion of the redundancy process, the employee must be issued with a certification of service.

Even though the Employment Act 2007 Section 40 (i) (b) is silent about the exact timelines for the issuance of the first notice, the Employment and Labour Relations Court has held that it is issued at least one month before the intended redundancy (Maema, 2016).

3.4 Perspectives of the International Labour Organization (ILO) on Redundancy

The ILO has put up Convention 158 on Termination of Employment Convention 1982 and Recommendation 166 to offer guidelines on dealing with employment termination (ILO, 1982)

The ILO Convention 158 states that on the event of termination of employment

- i. The employer provides a good time for consultations between the employer and the union on the reasons for terminations, number and categories of workers affected and period of termination in order to come up with a better way so as to minimize and mitigate the adverse effects of the termination.
- ii. The employer notifies competent authorities in good time about the terminations for reasons of economic, technological, structural or similar nature in accordance with the national laws. In the case of Kenya, the Employment Act, 2007 gives such duration to be not less than one month.

4. REDUNDANCY CASES HANDLED BY THE COURTS IN KENYA

Most of the cases involving redundancy end up in the Employment and Labor Relations Court of Kenya. A cursory look at such cases provides the trade unions with a better understanding of how best to address redundancy. Some of these cases are hereunder:

- The criteria for selection for redundancy and the need for consultation arose and were held by the court in the case between Kenya Union of Domestic Hotels, Education Institutions and Hospital Workers (KUDHEIHA) and the Agha Khan University Hospital and the case involving Banking Insurance & Finance Union (Kenya) (BIFU) versus Murata Sacco Society Limited, Cause No. 616 of 2010.
- In the case of Aviation and Allied Workers Union Vs Kenya Airways Limited & 3 others (2012) eKLR as cited in Maema (2016), the Court held that consultations before and during the redundancy exercise must be observed. This is as well in line with the Employment Act 2007 and the ILO Convention 158 & Recommendation 166 on termination of employment.
- In the Court of Appeal of the Republic of Kenya (2013), the case between Thomas De La Rue (K) Ltd Versus David Opondo Omutelema, the Court held that where the employee is a member of a union, then the notice of redundancy should be issued to the union only and not the employee. This ruling concurs with the provision of the Employment Act 2007 Sections 40(a) and 40(b). it was as well held by the Court that the selection criteria be determined by seniority in time, skill, ability & reliability of the employees.
- In Hesbon Ngaruiya Waigi Versus Equitorial Commercial Bank Limited (2013) eKLR as cited by Maema (2016), the court held that unfair termination was

executed without following terms and conditions as laid down in the Employment Act 2007

- The Court of Appeal and the Employment and Labour Relations Court have upheld that consultations take place between the key stakeholders – the trade unions and employees on the basis of an intended retrenchment. These rulings are in line with the ILO Convention 158 and Recommendation 166 of 1982 on Termination of Employment. A case in place is that of Kenya Airways Limited and 3 others (2014) in which about 450 employees of Kenya Airways sued the airline for unfair termination (<http://kenyalaw.org/caselaw/cases/view/101491/>)
- In the case between Kenya Plantation and Agricultural Workers Union and Harvest Ltd (2014), the court ruled that the criteria in selecting employees should have regard to seniority in time, skills, ability, and reliability. The selection parameters should all be taken into consideration and be objective in nature.
- In Mary Chemweno Kiptui Versus Kenya Pipeline Company Limited (2014) eKLR as cited in Maema (2016), the court held that the employer did not follow the due procedure and the substantive issues involved.

5. PROPOSED POLICY INTERVENTIONS BY THE TRADE UNIONS IN CASE OF REDUNDANCY

1. Lobby for employers to establish an **Insurance Scheme** that ensures the employees against risks of redundancy. Trade Unions should liaise with the Cabinet Secretary in charge of the Ministry of East Africa Community, Labour and Social Protection to use the powers as implied in Section 40(3) of the Employment Act 2007 to make such rules.
2. Lobby for **due consultations** between the employer (or employers representative) and the union as early as possible on measures to be taken to avert or minimize the termination as well as mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.
3. Trade Unions should lobby for the **ratification of the Convention 158 on Termination of Employment Convention 1982**, by the Republic of Kenya. This will make the convention a binding document that will enhance the protection of workers against the economic effects of redundancy as implied in the Convention
4. Trade union should appeal and promote the **use of alternative approach to retrenchment**. This includes restriction of hiring; encouraging natural reduction of employees; internal transfers & on the job training; voluntary early retirement; restriction of overtime as well as reduction of working hours.
5. Trade unions should be consulted on the determination of the employees, who are to be rendered redundant. This will enable the criteria to be based on skills, ability, reliability & seniority of the employees.

6. Trade unions should lobby for the government to **improve manufacturing infrastructure** through affordable electricity costs and favorable costs of transport while **cutting on the high costs of corruption** which leads to loss of revenues and closure of most companies that finally declare their employees redundant.
7. **More labour officers should be employed** by the government to enhance labour supervision and create awareness on the possible legal opportunities available other than redundancy.
8. There should be **closer supervision of employment agencies and employers** who resort to precarious work through outsourcing jobs that are permanent in nature. In this regard, decent work should be created for all: permanent, contract and casual workers. A case in point is the banking sector who are retrenching their tellers and replacing them with Agency banking. Currently, many commercial banks have Agency banking within the banking halls. Such institutions should be held responsible for *avoiding their employment role*.

6. ANALYSIS OF CONSUMER PRICE INDICES AND INFLATION RATES FOR DECEMBER 2016

6.1 Brief Analysis of the Consumer Price Indices for the period November 2015-December 2016

According to the Kenya National Bureau of Statistics, the CPI increased by 0.76 per cent from 173.85 points in November 2016 to 175.18 points in December 2016.

The Consumer Price Indices for the last 14 months are as shown in table 3 that follows (February 2009=100).

Table 3: CPIs for Kenya for the period November 2015 - December 2016

Month	Consumer Price Indices						
	Kenya	% change from previous month	Nairobi Lower Income Group	Nairobi Middle Income Group	Nairobi Upper Income Group	Nairobi Combined	Rest of Urban Areas
Nov 2015	162.97	0.39	166.02	141.75	142.70	159.29	162.97
Dec 2015	164.72	1.07	167.48	145.22	143.34	161.20	164.72
January 2016	165.37	0.39	167.60	144.24	144.30	161.09	165.37
February 2016	164.67	-0.42	167.38	143.39	144.19	160.72	167.44
March 2016	165.92	0.76	169.19	143.78	144.21	162.12	168.58
April 2016	167.07	0.69	170.86	143.97	145.61	163.42	169.62
May 2016	167.99	0.68	171.89	144.59	145.93	164.32	170.55
June 2016	169.76	0.01	174.08	145.59	146.21	166.15	172.29
July 2016	170.84	0.64	174.51	146.18	146.94	166.64	173.78
August 2016	170.97	0.08	174.40	146.76	148.33	166.75	173.92
September 2016	172.56	0.35	174.60	147.19	148.71	167.01	174.74
October 2016	172.62	0.03	176.05	147.22	148.68	168.06	175.82
November 2016	173.85	0.71	177.67	147.61	149.23	169.35	177.01
December 2016	175.18	0.77	179.04*	148.75*	150.38*	170.65*	178.37*

Source: KNBS

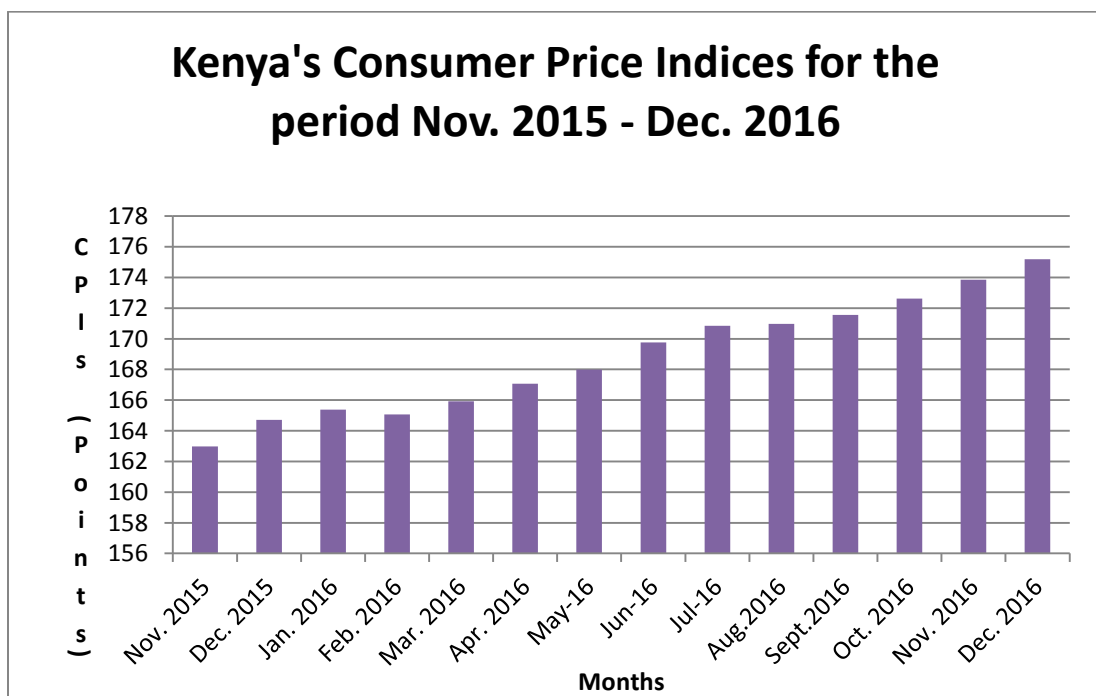
Notes: 1. * Author's estimates based on overall change in the CPI

2. Nairobi Lower Income Group are households that spent less than Kshs. 23,670 in October 2005; Nairobi Middle Income Group are households that spent between Kshs. 23,671 to Kshs. 119,999 in October 2005 while Nairobi Upper Income Group are households that spent above Kshs. 120,000 in October 2005. The Rest of urban areas

are Mombasa, Malindi, Machakos, Nyeri, Thika, Nakuru, Kisii, Kisumu, Eldoret, Nyahururu, Garissa and Bungoma.

The graphical representation of the CPI for the 14 months is shown in figure 2 that follows:

Figure 2: Graph of Kenya’s CPIs for the period June 2015 - July 2016



Source: Author’s construction based on KNBS data

As shown in table 3 and figure 2, consumer prices have been on the rise for the last 14 months, albeit at different rates. For instance, the CPIs increased from 162.97 points in November 2015 to 175.18 points in December 2016. This shows that the cost of living has been increasing over the period under review.

The resultant effect is the erosion of the workers' purchasing powers month by month. And given that wages are rigid, workers become worse off as their access to basic goods and services diminish. Compensation is therefore necessary in line with the wage guidelines 2005 to enable the workers remain at the same levels of welfare before the rise in cost of living.

In this regard, trade unions should ensure that as they negotiate collective bargaining agreements, consumer price increases over the period under review are considered and workers are compensated appropriately.

6.2 Brief Analysis of the Inflation Rates for the period November 2015- December 2016

The overall inflation rate for the month of December 2016 has been stated by the Kenya National Bureau of Statistics (KNBS) as 6.35 per cent. This is a 4.94 per cent decrease from the November 2016 inflation rate of 6.68 per cent.

The inflation rates for the last 14 months are as shown in table 4 that follows (February 2009=100)

Table 4: Kenya's Inflation rates for the period November 2015- December 2016

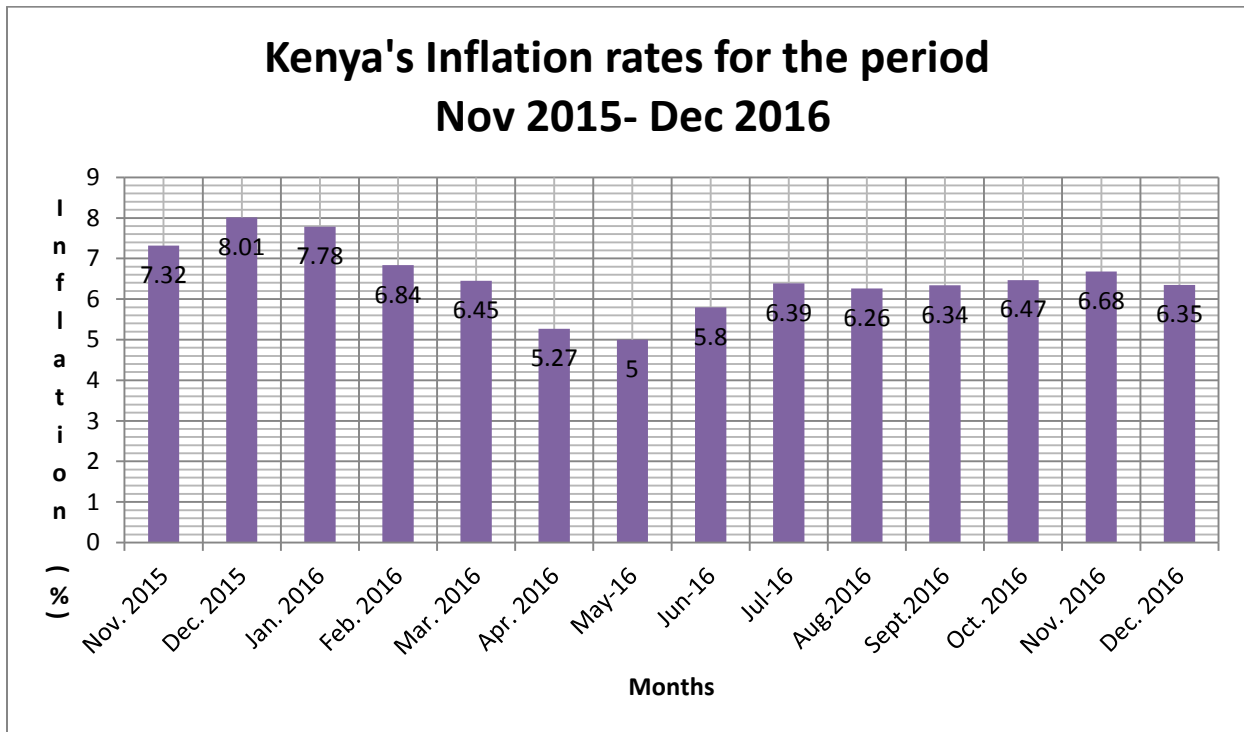
Month	Inflation Rates (%)						
	Kenya	% change from previous month	Nairobi Low Income Group	Nairobi Middle Income Group	Nairobi Upper Income Group	Nairobi Overall	Other Urban Areas
Nov 2015	7.32	8.93	8.60	5.03	3.38	7.63	7.12
Dec 2015	8.01	9.43	8.70	7.09	4.83	8.21	7.87
January 2016	7.78	-2.87	7.68	5.91	5.44	7.22	8.16
February 2016	6.84	-12.08	6.94	5.24	5.51	6.53	7.04
March 2016	6.45	-5.70	6.54	4.88	5.21	6.13	6.67
April 2016	5.27	-18.29	5.57	4.52	5.76	5.35	5.22
May 2016	5.00	-5.12	6.05	4.05	5.02	5.58	4.61
June 2016	5.80	16	7.15	3.48	5.00	6.28	5.48
July 2016	6.39	10.17	7.24	3.55	3.95	6.33	6.44
August 2016	6.26	-2.03	7.14	3.60	3.35	6.24	6.27
September 2016	6.34	1.28	7.03	3.62	3.74	6.17	6.45
October 2016	6.47	2.05	7.18	3.73	3.93	6.32	6.57
November 2016	6.68	3.25	7.02	4.13	4.58	6.32	6.92
December 2016	6.35	-4.94	6.67*	3.93*	4.35*	6.01*	6.58*

Source: KNBS

*Author's estimates based on overall change in inflation

The graphical representation for the Inflation rates for the 14 months is shown in figure 3 that follows.

Figure 3: Kenya's Inflation rates for the period August 2015 - September 2016



Source: Author's construction based on KNBS data.

The data presented on table 4 and figure 3 shows that inflation rose from 7.32 per cent in November 2015 to 8.01 per cent in December 2015 (the highest rate over the last 14 months). Inflation then decreased to the lowest level (5 per cent in May 2016) then started rising again to 6.68 per cent in November 2016. The inflation rate finally dropped to 6.35 per cent in December 2016.

These trends in inflation depict the impact of monetary initiatives of the central bank. They show that the inflationary policy initiatives have just been able to contain inflation for shorter periods. Remarkably, better inflationary policies should be in place to contain inflation in the long run.

7.0 CONCLUSION

This paper has examined and analyzed redundancy, its implications and possible policy recommendations to avert it. Trade unions and other social partners should strongly advocate for alternative resolutions instead of opting for redundancy due to its serious economic and social negative effects on the workers and the economy at large. In case redundancy has to be executed, the provisions of the Employment Act 2007 should effectively be upheld.

REFERENCES

1. eKLR <http://kenyalaw.org/caselaw/cases/view/83724>
2. ILO Convention 158, Termination of Employment Convention 1982
blue.lim.ilo.org/cariblex/pdfs/ILO_Convention_158.pdf
3. ICFTU (2006): Internationally Recognized Core Labour Standards in Kenya. Report further WTO General Council review of the trade policies in Kenya. International Confederation of Free Trade Unions
4. The Environment and Social Impact Assessment study (ESIA) by Chinese Communication Construction Company (2016)
5. Business daily Nov. 18th 2016. Job losses for Kenya Bank Workers as 1000 lose jobs in 3 months
6. Republic of Kenya: Economic Surveys (Various 2010-2016)
7. Republic of Kenya: Statistical abstracts (Various 2010-2016)
8. Blejer, M.I. and Khan, M.S (1984), Government Policy and private investment in developing countries, FMI, staff papers, Vol. 31, No. 2
9. Khan, M.S and Kumar M.S, (1997). Public investment, productivity and economic growth in developing countries. *Journal of public budgeting, accounting and financial management*, 9(3), pp 440-466
10. www.judiciary.go.ke