REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO.632 OF 2008

REPUBLIC.....APPLICANT

VERSUS

THE INDUSTRIAL COURT OF KENYA.....RESPONDENT

KENYA UNION OF COMMERCIAL FOOD

AND ALLIED WORKERS.....INTERESTED PARTY

EXPARTE

BRITISH AMERICAN TOBACCO KENYA LIMITED

JUDGEMENT

1. The Applicant (British American Tobacco Kenya Limited) is a company registered in Kenya carrying on the business of cigarette manufacture, tobacco leaf processing and distribution. The defunct Industrial Court of Kenya (the Respondent) was established by statute to hear and determine disputes between employees and employers. Kenya Union of Commercial Food and Allied Workers is the Interested Party. Its core business is to champion workers' interests in the work place.

2. Through a Notice of Motion dated 23rd October 2008 the Applicant prays for an order of certiorari to remove into this Court and quash an award made by the Respondent on 3rd October, 2008 in Cause No. 143 of 2007 being a dispute between the Interested Party herein and the Applicant. The Applicant also asks for cost of the proceedings. The application is supported by the Chamber Summons application for leave, the statutory statement and the verifying affidavit of the Applicant's Legal Counsel Connie Anyika sworn on the 13th October 2008.

3. From a perusal of the papers filed in Court the Applicant's case can be summarised as follows. In 2006 the Applicant embarked on reorganisation of its business so as to comply with its regional strategy aimed at driving down the cost of cigarettes and aligning itself with the benchmarks of global producers. To this end the company adopted reforms known as project vitality, which involved contracting out maintenance and engineering services at the factory, accompanied by a multi-skilling programme which involved merging machine operations and maintenance.

4. As a result of this reorganisation, there was need to change the business model operations, from the one where there were separate operators and technicians of the equipment machinery to a model where the

equipment machinery was being handled by one person leading to some of the roles and positions becoming superfluous while others were merged. Consequently, four managerial and six non-managerial positions were declared redundant. The management employees were terminated in August 2006 while those in the non-management followed in October of the same year.

5. The Interested Party being of the view that the redundancy was unprocedural and unjustified took up the matter with the Ministry of Labour and Human Resource Development. The Ministry did not succeed in solving the dispute and referred the same to the Respondent and the dispute was registered as Cause No. 143 of 2007.

6. After hearing the matter the Respondent made the award dated 3rd October, 2008 in the following terms:

> **"1. The Respondent immediately put into effect the process of reinstatement of the grievants and each of them to their original job and position as at the date of their termination, without loss of their full salaries and all other benefits and allowances, privileges and continuity of service.**
>
> **2. In the event that a particular grievant no longer wishes to work for the Respondent, the Respondent do pay to such employee the following terminal dues:**
>
> a. **All outstanding wages, leave pay and allowances as provided for in the Collective Bargaining Agreement between the parties.**
>
> b. **Pay in lieu of notice in accordance with the parties Collective Bargaining Agreement.**
>
> c. **Severance pay in accordance with Clause 31 of the Collective Bargaining Agreement between the parties.**
>
> d. **Twelve (12) months wages by the way of compensation for unlawful loss of employment.**
>
> **3. The foregoing payments be effected within thirty (30) days from the date of this award."**

7. The Applicant is aggrieved by the award and is of the view that an order of certiorari should issue to quash the decision. It is the Applicant's case that the positions which the grievants were occupying are no longer in existence. The Applicant contends that it had offered the grievants a package amounting to 25,135,111.33 and was willing to pay this amount, but five out of the six grievants had rejected the same.

8. The Applicant asserts that one of the grievants Mr Joseph Obonyo Nyang had collected some of his cheques prior to the issuance of the award and there was therefore no dispute to be entertained by the Respondent. The Applicant asserts that by proceeding with the matter the Respondent had violated its rights under Section 77(9) of the repealed Constitution and further that it had not received a fair hearing from the Respondent.

9. The Applicant submits that the Respondent had no jurisdiction under the Trade Disputes Act (now repealed) and the Employment Act (now repealed) to order reinstatement of employees in cases of redundancy. It is the Applicant's case that in making the impugned award, the Respondent assumed jurisdiction where it did not have any and the resultant award was a nullity.

10. The Applicant asserts that it was ironical for the Respondent to affirm its right to embark on redundancy thus admitting that the positions held by the grievants were no longer in existence and at the same time act against the rule of law by ordering their reinstatement. Further, that the Respondent exceeded its jurisdiction by imposing exemplary or punitive damages for alleged unlawful loss of employment.

11. The Attorney General who appeared for the Respondent opposed the application and contended that under the Labour Institutions Act No. 12 of 2007 the Respondent had power to hear and determine any dispute between an employee and an employer. The Attorney General submitted that the Respondent followed the law when it made the award and what the Applicant is essentially complaining about touches on the merits of the decision. It was submitted that the decision of the Respondent was sound in law as the Applicant had not complied with the law in declaring the redundancy. Further that the Respondent therefore made the appropriate relief in accordance with the Collective Bargaining Agreement.

12. It was submitted for the Respondent that Section 15 of the Labour Relations Act provides that one of the remedies where a finding is made that the law on redundancy was not followed is to enter a finding of wrongful dismissal. Further, that Section 16 of the Employment Act sets out the conditions to be followed when one is declaring an employee redundant.

13. It is submitted that the Respondent agreed with the finding of the Minister that the redundancy was unprocedural and the Applicant is only interested in attacking the merits of the decision.

14. The Interested Party opposed the application by way of replying affidavits. According to the papers filed in Court, the Interested Party's case is that the dispute between it and the Applicant was determined on merit by the Respondent. The Interested Party contended that it was established after proper and adequate consideration that the Applicant's employees were wrongfully terminated.

15. The Interested Party averred that after establishing the termination of the services of the grievants was unlawful, the Respondent went ahead and granted the lawfully remedies as stipulated under Section 15(1) of the repealed Trade Disputes Act, Cap 234, Laws of Kenya. It is the Interested Party's case that there was no finding of redundancy by the Respondent but a finding that the employment of the Applicant's employees had been unlawfully terminated.

16. The Interested Party contended that the orders as prayed for by the Applicant are not available in view of the provisions of Section 27 of the Labour Institutions Act No. 12 of 2007 and that Section 12 of the same Act gave the Respondent the mandate to determine any dispute forwarded to it. It is further the Interested Party's case that the Judge who made the award was well within the law and the same did not offend any law. The Interested Party asserted that the decision is well founded in law and the only avenue available to the Applicant was to appeal to the High Court.

17. The Interested Party argued that the Applicant is only intent in delaying the execution of the award and thus denying the aggrieved employees fair play and justice. The Interested Party asserted that the application as filed has no merit and is also incurably defective and it should be struck out with costs.

18. The Interested Party denied knowledge of the Applicant's allegation that it was in the process of reorganising its business or the consequences of such a process. It is the Interested Party's case that the posts that were occupied by its members were never scrapped but are in fact occupied by casual employees.

19. The Interested Party averred that the sum of Kshs. 25,135,111.33 offered by the Applicant to the aggrieved employees is only part payment of the Court award and it was still waiting for the Applicant to comply with the award but the Applicant had instead resorted to this case as an afterthought with a view to delay the payments.

20. I have gone through the pleadings and heard the submissions herein and I find that the issues for the determination of the Court are:

a. Whether this Court had supervisory jurisdiction over the Industrial Court as it existed prior to the promulgation of the current Constitution; and

b. If the answer to the above is in the affirmative, the next question is whether the Industrial Court's award was illegal.

25. Before I embark on dealing with the two major issues it would be proper to perhaps give a brief history of this matter. After concluding its reorganisation, the Applicant decided to declare some of its employees redundant. Among those whose jobs were allegedly lost in the reorganisation were Robert Machira, Japeth Nyaga Mati, Joseph Obonyo Nyang, Benson Mwangi Macharia, Justus Musembi Muthiani and Lawrence Muraya Waithegeni. The Applicant proceeded to declare these employees redundant. On learning of the impending job losses the Interested Party intervened and tried to sort out the issue by entering into negotiations and advising the Applicant to follow the laid down procedure. The negotiations failed and the matter was forwarded to the Minister for Labour and Human Resources Development who found in favour of the Interested Party. The matter subsequently landed before the Respondent hence the award which is the subject of these proceedings. The Respondent agreed with the Minister that the redundancy procedure was not followed and made the award in favour of the employees who were being represented by the Interested Party.

26. It appears that the Applicant is only aggrieved with part of the award and in particular the order of reinstatement and what it calls exemplary and punitive damages.

27. When the matter came to Court it was forwarded to the Chief Justice who appointed a panel of three judges to hear and determine the matter. The case however did not take off before the panel as some of the judges proceeded on transfer. Eventually Warsame, J (as he then was) ordered that the grievants be paid what was not in dispute.

28. Having established the genesis of the dispute, I will proceed to deal with the first issue. The award which the Applicant challenges was made on 3rd October, 2008 under the repealed Constitution. This matter will therefore be addressed in the light of the law that prevailed at that time. It is also important to note that quite a number of the legal provisions then in place relating to employment and industrial relations have since been repealed.

29. In opposition to the application, it is asserted that under Section 27 of the Labour Institutions Act this Court had no jurisdiction to stop the proceedings of the Respondent as its decisions were only appealable to the Court of Appeal. Further, that Section 17 of the Trade Disputes Act provided that the Respondent's awards were final and could not be challenged by way of judicial review and specifically the order of certiorari. Several authorities are cited in support of these arguments. The Applicant on its part holds the view that the cited provisions did not oust the supervisory jurisdiction of this Court.

30. I have in my previous decisions reached the conclusion that this Court had supervisory jurisdiction over the Industrial Court which existed before the passage of the Kenya Constitution 2010. Reaching this conclusion in **Republic v Industrial Court ex-parte Morris & company (2004) Ltd [2012] eKLR (Nairobi High Court Misc. Civil Suit No. 678 of 2008)** I observed that:

> **"The fact that the makers of the repealed Constitution did not include the Industrial Court among the subordinate courts can only imply that the Industrial Court was an afterthought and when it was created the lawmakers did not find it necessary to give it constitutional status by introducing the necessary amendments. One could say that its jurisdiction was special but that alone did not put it at par with the High Court. This court when exercising its judicial review powers, exercises special jurisdiction conferred upon it by the Law Reform Act and Order 53 of the Civil Procedure Rules. It will issue orders to curb maladministration. It cannot stand aside and say that the Industrial Court exercised special jurisdiction in that it handled employer-employee disputes and therefore its decisions could not be reviewed. In my view the Industrial Court was before 27th August, 2010 an inferior tribunal amenable to the supervision of the High Court."**

31. I repeated the same sentiments in **Kenya Ports Authority v The Industrial Court, Interested Party Kenya Dock Workers Union & another [2012] eKLR (Nairobi High Court Misc. Case No. 995 of 2007).**

32. There was the submission that Section 17 of the repealed Trade Disputes Act Cap. 234 barred this

Court from exercising supervisory jurisdiction in respect of decisions emanating from the Industrial Court. Section 17 of the said Act had provided as follows:

> **"17(1) The award or decision of the Industrial Court shall be final.**
>
> **(2) The award, decision or proceedings of the Industrial Court shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, certiorari or otherwise, either at the instance of the Government or otherwise."**

33. The argument that the above cited provision denied the Court the power to review the decisions of the Respondent is an attack on the jurisdiction of this Court from a different angle. As already stated, this judgement addresses the law as it was prior to the promulgation of the current Constitution. A reading of the current Constitution clearly shows that the Court established under Article 162(2)(a) of the Constitution to deal with disputes relating to employment and labour relations is by virtue of Article 162(1) a superior court and as provided by Article 165(6) this Court has no supervisory jurisdiction over it.

34. Moving to the question before this Court, I note that Section 17 of the Trade Disputes Act has been met by two different interpretations by this Court. One of the two interpretations is found in the decision of Mohammed K. Ibrahim, J (as he then was) in the case of **Republic v Industrial Court of Kenya, Nairobi H.C. Misc. Application No. 1143 of 2004**. In that case the learned Judge was of the view that the repealed Constitution did not give supervisory jurisdiction to the High Court over the Industrial Court. He also held the view that even if the decisions of the Industrial Court were amenable to review by the High Court, Section 17(2) of the Trade Disputes Act had clearly denied the High Court jurisdiction to grant judicial review remedies in respect of awards made by the Industrial Court.

35. On the issue of the Constitution and Industrial Court this is what the learned Judge had to say at pages 24 and 25 of his judgment:

> **"Under Section 65 of the Constitution, Parliament is empowered to establish subordinate courts and courts martial. On the grounds, I hold that the Industrial Court is not a court contemplated by Section 65(2) of the Constitution as it was not established by Parliament under Section 65 (1). As such it is not a court amicable to the supervision of the High Court under the said provision."**

36. The school of thought espoused by Ibrahim, J was supported by J.G. Nyamu, J (as he then was) who had earlier held in the case of **Kenya Guards & Allied Workers Union v Security Guards Services & 38 others, Nairobi H.C. Misc. Application No. 1159 of 2003** that:

> **"Section 17(2) of the Trade Disputes Act which gives finality to the Industrial Court awards reflects a deliberate policy decision by Parliament to achieve finality in the handling of industrial relations. It is the function of Parliament to articulate policy and to legislate in order to give effect to that policy. On the other hand it is the function of the courts to interpret legislation. It has not been suggested that section 17(2) of the Trade Disputes Act is ambiguous or capable of having more than one meaning. It would be a violation of the constitutional doctrine of separation of powers for this court to usurp the powers of Parliament to make law.**
>
> **It is also significant to observe that the finality intended by Parliament as stated in the section has served this nation well since the establishment of the Industrial Court many years ago. This court cannot therefore ignore the great public interest that has been achieved by the finality of the Industrial Court awards. Granted that the Industrial Court, like any other court can make mistakes, the mischief of those mistakes is greatly outweighed by the virtue of the finality of the awards. Parliament had addressed the issue of mistake in Section 16 of the Trade Disputes Act where in the event of a mistake an applicant can request the Industrial Court for an interpretation of an award. To my mind there is therefore no loophole for the**

court to seal and make judge made law in the situation before me."

37. The other school of thought was articulated by Visram, J (as he then was). He was of the view that the repealed Constitution did not cloth the Industrial Court with the status of the High Court and that being so the only other cloth available to the Industrial Court was that of subordinate courts. Having grouped the Industrial Court with the subordinate courts, he went ahead to find that the Industrial Court was amenable to the supervisory jurisdiction of the High Court. He brought out this position clearly in the case of **Kenya Airways Limited v Kenya Airline Pilots Association, Nairobi H.C. Misc. Application No. 254 of 2004** when he stated that:

> **"I agree with the applicant's contention that the Industrial Court is subordinate to the High Court as the Constitution, specifically sections 60 and 65(2) when read together with Section 123 (1) strongly suggests that the High Court is empowered to play a supervisory role over the Industrial Court. Further, the Constitution supersedes the Interpretation and General Provisions Act and I would therefore go by the Constitution and hold that the Industrial Court is inferior to the High Court.**
>
> **In the present case, I am satisfied that there is prima facie evidence to suggest that the Industrial Court did act in excess of its jurisdiction. I am also persuaded that where there is an ouster clause in an Act such as Section 17(2) of the Trade Disputes Act and the inferior court (the Industrial Court) acts in excess of its jurisdiction then the High Court has power to interfere with that decision or award of that inferior court."**

38. This same position was adopted by this Court (K. H. Rawal, J (as she then was), O. Mutungi and M. Kasango, JJ) in **Mecol Limited v Attorney General & 7 others [2006] eKLR** when they stated that:

> **"It is with a sigh of relief that we note that all learned counsel appearing for the Respondents have conceded that the Industrial Court is a subordinate Court in terms of section 65[1] and section 123[1] of the Constitution and we do express our appreciation to their candid acceptance to the obvious point of law."**

39. The Court went ahead and gave its opinion on the other issues relating to jurisdiction. Having found that the Industrial Court was a subordinate court the Court went ahead to decide whether the awards of the Industrial Court were by their unique nature not amenable to review by the High Court and this is what the Court said:

> **"…we are of the firm view that the makers of the Constitution could not possibly have intended that there would be a branch of the law not amenable to the supervision by way of Judicial Review of the High Court so far as any Subordinate Court is concerned……. We also observe that the nature of litigation before the Industrial Court falls within the ambit of Civil Law remedies touching the issues of employment and trade disputes. Accordingly, the High Court is empowered by the Constitution to grant orders of certiorari, mandamus or prohibition in respect of proceedings and decisions of the Industrial Court like any other subordinate courts."**

40. On the issue of Section 17(2) of the Trade Disputes Act which appeared to bar the High Court from issuing orders of certiorari and prohibition in respect of awards made by the Industrial Court, the Court found the said section to be inconsistent with the provisions of the sections 65[2] and 84[2] of the former Constitution. They declared the said provision of the Trade Disputes Act unconstitutional.

41. In my view, the question of the supervisory power of this Court over the Industrial Court was laid to rest by the Court of Appeal when it stated in **Director Kenya Medical Research Institute v Agnes Muthoni & 35 0thers [2014] eKLR (Court of Appeal at Nairobi Civil Appeal No. 15 of 2011** that:

> **"It has been argued by the respondent/appellant that if jurisdiction is declined by this court then the appellant will be rendered remediless. We do not think so. There is the right to**

judicial review and if the right to access judicial review has been foreclosed by effluxion of time then there is the remedy by way of declaratory suit and or by way of petition."

The import of the statement is that the High Court had supervisory jurisdiction over the awards of the defunct Industrial Court.

42. The contention that appeals from the decisions of the Respondent lay with the Court of Appeal as provided by Section 27 of the Labour Institutions Act was recently firmly rejected by the Court of Appeal in the case of **Director Kenya Medical Research Institute v Agnes Muthoni & 35 0thers [2014] eKLR (Court of Appeal at Nairobi Civil Appeal No. 15 of 2011).** In that case the Industrial Court had made an award against the Appellant which included an order directing it to reinstate the respondents. Before the appeal could be heard a preliminary objection was taken up on the ground that the Court of Appeal had no jurisdiction to entertain the appeal as it violated Section 64 of the repealed Constitution.

43. Upholding the objection, the Court stated:

"Learned counsel for the preliminary objector has argued that in so far as section 27 conflicted with section 60 and 64 of the retired constitution, this court should enforce section 3 of the same retired constitution and hold that the jurisdiction donated by section 27 of the labour institutions Act was non-existent as the said section contravened constitutional provisions. The respondent /appellant's counsel has on the other hand cautioned us alleging that in doing so this court would be exceeding its mandate as it would have been invited to declare section 27 of the labour institutions act (Supra) unconstitutional, an original jurisdiction vested only in the high court.

We stand guided and are in agreement that the caution is well founded. But our finding that the caution is well founded notwithstanding, we are in agreement that we are capable of construing section 3 of the retired constitution competently and when so construed it is evidently clear that by virtue of this provision the retired constitution declared both supremacy over and primacy legislative law. By reason of this afore said declaration of supremacy and primacy, section 27 of the labour institutions Act falls into the category of a legislative law. It therefore means that as long as section 3 and 64 of the retired constitution and section 3 of the appellate jurisdiction Act (supra) stood then as at the time appellate process objected to herein were set in motion, the court of appeal had no mandate to receive direct appeals from the industrial court as it was then established. We are in agreement with the argument of the preliminary objector that this was a right which was void and incapable of being enjoyed."

44. In conclusion, I find and hold that this Court had supervisory jurisdiction over the Respondent. The decisions of the Respondent could only be protected if they had complied with the law and the rules of natural justice. For example, in **Mecol Limited v Attorney General & 7 others [2006] eKLR (Nairobi H.C Misc. Civil Application No. 1784 of 2004)** the Court declared the award of the Industrial Court null and void as it had been arrived at in breach of the rules of natural justice.

45. The remaining question is whether the Respondent exceeded its jurisdiction. It must be remembered that this matter has been brought under the judicial review regime. The purpose and reach of judicial review was aptly captured by the Court of Appeal in the case **Municipal Council of Mombasa v Republic & Umoja Consultants Limited, Nairobi Civil Appeal No. 185 of 2001 ([2002] eKLR)** as follows:

"The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a

court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review."

46. The Applicant has argued that the Respondent acted *ultra vires* by ordering the reinstatement of the grievants despite the fact that S.16 A of the repealed Employment Act did not provide the remedy of reinstatement. The Respondent on the other hand has contended that what the Applicant is simply doing is attacking the merit of the decision and has therefore not satisfied the conditions for grant of judicial review orders. I have perused the repealed Employment Act, the repealed Trade disputes Act, together with the award made by the Industrial Court.

47. The repealed Trade Disputes Act at Section 15 provided that:

"15. (1) In any case where the Industrial Court determines that an employee has been wrongfully dismissed by his employer, the Court may order that employer to reinstate that employee in his former employment, and the Court may in addition to or instead of making an order for reinstatement, award compensation to the employee:

Provided that such compensation shall not exceed -

(i) in a case where reinstatement is ordered, the actual pecuniary loss suffered by the employee as the result of the wrongful dismissal;

(ii) in any other case, twelve months monetary wages.

(2) Without prejudice to any other remedy, any compensation awarded under this section may be recovered summarily as a civil debt.

(3) Any person who without lawful excuse fails to comply with an order for reinstatement shall be guilty of an offence, and shall be liable to a fine of two thousand shillings for every month or part thereof during which the commission of the offence is continued.

(4) Any court imposing a fine under subsection (3) may award compensation to the employee who is the subject of the order for reinstatement for the loss suffered by him as the result of the failure of his employer to comply with the order, and for that purpose the court may pay to the employee the fine or such part of it as the court may think fit.

(5) An award of compensation to a person under subsection (1) shall be a bar to proceedings at the suit of that person in any other court in respect of the same wrongful dismissal."

48. The Industrial Court in making the award considered the matter that was before it, together with the evidence that was adduced and came to the decision that the law on redundancy as laid down under Section 16 A of the Employment Act was not followed. The Respondent then proceeded to make a finding that what had been done to the grievants amounted to unlawful termination. The Court proceeded to award the remedies for unlawful termination as were found in Section 15 of the repealed Trade Disputes Act.

49. The Applicant contends that it was ironical for the Respondent to find in the same decision that the Applicant was entitled to declare redundancies and at the same time conclude that the termination of the employment of the grievants was unlawful. According to the Applicant, the Respondent having found that law was not in declaring the redundancies, the only finding the Respondent could have reached was that dismissal was unlawful as it had failed to comply with the law.

50. The Applicant's argument cannot be accepted. Once the Respondent found that the redundancies were unlawful, it had to give a remedy. The Respondent correctly proceeded to issue the remedies

lawfully given by Parliament through Section 15 of the repealed Trade Disputes Act. There was nothing unlawful in the acts of the Respondent. It also did not exceed its jurisdiction. I therefore agree with the Respondent and the Interested Party that the Applicant is indeed attacking the merits of the decision and as already stated judicial review is not concerned with the merits of the decision but the decision making process.

51. Reading through the submissions and papers filed in Court, I get the Applicant to be saying that the Respondent ought not to have ordered reinstatement but should have given damages to the grievants. In support of its argument, the Applicant cited, among others, the recent Court of Appeal decision in **Kenya Airways Limited v Aviation & Allied Workers Union and 3 others, Nairobi Civil Appeal No. 46 of 2013.** At paragraph 28 of his judgement Githinji, JA held that:

> **"I have already made a finding that this was a genuine redundancy resulting in loss of jobs and that fair procedure was applied. In my view, the normal remedy for a genuine redundancy even in cases where the services were not terminated in accordance with a fair procedure would be compensation by way of damages in accordance with CBA and Section 49 of the Employment Act."**

52. Addressing the same issue, Maraga, JA at paragraph 76 of his judgement opined that:

> **"However, having found that redundancy was justified, I hold that the remedy of reinstatement with back wages was, in the circumstances, not efficacious and I accordingly set aside the learned Judge's order of reinstatement in its entirety and substitute it with an award of damages equivalent to six months' salary to each of the 447 retrenched employees."**

53. As can be seen, the Court of Appeal and specifically Maraga, JA did not state that orders of reinstatement are not available in redundancies that have not followed fair procedure. In any case, the issue of remedies goes to the merits of the decision and that is a no go zone for a judicial review court.

54. From the material placed before this Court, the only conclusion that can be reached is that the Applicant has not established the grounds for grant of the orders sought in its application. The Applicant's case is therefore dismissed with costs to the Respondent and the Interested Party.

Dated, Signed and delivered in Nairobi this 30th of day April, 2015

W. KORIR,

JUDGE OF THE HIGH COURT