



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO E463 OF 2021**

**ALPHA VISION MULTIMEDIA LIMITED.....1<sup>ST</sup> CLAIMANT**

**ALPHA VISION KENYA LIMITED.....2<sup>ND</sup> CLAIMANT**

**RADIOTELLE LIMITED.....3<sup>RD</sup> CLAIMANT**

**VERSUS**

**SINTOYIA CINDY KASAINA.....RESPONDENT**

**RULING**

1. On 10<sup>th</sup> June 2021, the Claimants filed a claim against the Respondent seeking the following reliefs:

- a) A permanent injunction against the Respondent, stopping her from disclosing information regarding the Claimants herein, Alpha Vision Multimedia Limited, Radiotelle Kenya Limited and Soundcity Radio Network;
- b) A permanent injunction against the Respondent restraining her from blackmailing and/or issuing defamatory statements against Alpha Vision Multimedia Limited, Radiotelle Kenya Limited, Soundcity Radio Network, its employees and or directors.

2. Contemporaneously with the claim, the Claimants filed a Notice of Motion under Certificate of Urgency seeking the following:

- a) An interim restraining order against the Respondent preventing her from publishing any adverse information against the Claimants and/or their subsidiaries and/or carrying out any further acts which are harmful to the Claimants' business operations;
- b) An order restraining the Respondent from presenting herself as an employee, agent, or officer of the Claimants' Company and publishing any defamatory information against the Company and/or its subsidiaries;
- c) An order compelling the Respondent to relinquish her company ID, all company documents and property in her possession with immediate effect.

3. The application is supported by an affidavit sworn by Tajuddeen Adepetu and is based on the following grounds:

- a) The Respondent is a former employee of the Claimants wherein she had been employed as Country Manager for the Claimants since 23<sup>rd</sup> April 2018;
- b) The Respondent's employment was terminated vide termination letter dated 2<sup>nd</sup> June 2021, as a result of gross insubordination coupled with continued unacceptable conduct in the company and performance, acting in an unprofessional manner and offensive behaviour;
- c) The Respondent, to further add salt to the already throbbing wound, neglected her duties and refused to comply with directives issued by the CEO of the Claimants and the Company Secretary, which further affirmed the decision of the Claimants to terminate her contract;
- d) The Respondent neglected her duties, stopped showing up at the office, refused and/or neglected to comply with instructions issued by the Company Secretary to hand over some confidential corporate documents and other company equipment;

e) The Respondent, before her termination, was issued with a letter dated 26<sup>th</sup> May 2021, to show cause why disciplinary action should not be taken against her as a result of her gross insubordination;

f) The Respondent failed to show any justifiable cause, after responding later than the expected date of 30<sup>th</sup> May 2021, but resorted to throwing tantrums, insulting the company directors and CEO, making threats and uncalled for behaviour;

g) This thus prompted the CEO of the Claimants to dismiss the Respondent;

h) Ever since her termination of employment, the Respondent has been engaging in acts of blackmail and intimidation to the Claimants and its directors, defaming the directors, Company Secretary and other employees and also threatening to tarnish the business of the Claimants and its subsidiaries, which include Radiotelle Kenya and Soundcity Radio Network;

i) The Respondent has further threatened to release the Claimants' trade secrets, which include the mode of operation of the business, which is in turn causing immense loss and reputation damage to the Claimants and all their subsidiaries;

j) Without the Court's urgent intervention, the Claimants stand to suffer immense loss and damage to their business, which may not be recovered;

k) The selfish acts of the Respondent amount to grave misconduct, a violation of her employment contract, which in turn has put the Company and the rest of the employees at a high risk of suffering irreparable loss and harm.

4. The Respondent responded to the Claimants' application by a replying affidavit sworn on 28<sup>th</sup> June 2021.

5. The Respondent terms the application as bad in law, incompetent and an abuse of the court process.

6. The Respondent states that the Claimants' act of dismissing her from employment as Country Manager is unlawful and unfair.

7. The Respondent narrates the events leading to her employment with the Claimants as follows:

a) That sometime in 2018, she met the Director of the 1<sup>st</sup> Claimant, Tajuddeen Adepetu, who expressed interest in setting up a telecommunication company in Kenya;

b) That in compliance with the requirement for a foreign company to allot a minimum of 30% shareholding to a Kenyan Citizen in the telecommunication industry and based on the Respondent's work experience in the said industry, the 1<sup>st</sup> Claimant, through its Director, approached the Respondent to be the local representative of the Company;

c) That on 19<sup>th</sup> April 2018, the Respondent was appointed as the Country Manager of the 2<sup>nd</sup> Claimant, effective 23<sup>rd</sup> April 2018, a position in which she served for four years until the termination of her contract;

d) That on 8<sup>th</sup> May 2018, the Respondent, together with Adepetu incorporated the 2<sup>nd</sup> Claimant;

e) That at time of incorporation, the Respondent held 30% of the 2<sup>nd</sup> Claimant's shares, with the remaining 70% being held by Adepetu;

f) That the Respondent has operated, managed and run the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants as Country Manager, since inception;

g) That the Respondent's woes with the Claimants started when she received a letter dated 8<sup>th</sup> April 2020, from the Company Secretary, forwarding a deed of transfer of shares for the Respondent to execute in order to transfer her shares to Adepetu;

h) That upon her refusal to sign the deed of transfer of shares, the Respondent was served with a notice to show cause dated 26<sup>th</sup> May 2021 to which she responded on 31<sup>st</sup> May 2021.

8. The Respondent denies blackmailing or intimidating the Claimants and states that she has continued to fight for her right as a minority shareholder and a director of the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants but her co-directors have continued to frustrate her, with the intention of removing her from directorship of the 2<sup>nd</sup> Claimant.

9. The Respondent further states that the Claimants are determined to remove her from the Board of Directors of the 2<sup>nd</sup> Claimant.

10. By their application, the Claimants seek a general gag order against the Respondent. A gag order militates against freedom of expression guaranteed under Article 33 of the Constitution and as held by **Majanja J** in **Okiya**

11. **Omtatah Okioti v Attorney General & 2 others [2013] eKLR** any limitation on the freedom of expression must be justified. The Claimants have not presented any such justification.

12. What is more, the pleadings filed by the parties reveal that the dispute herein may well go beyond employment to cover shareholding and directorship. The real issues will only emerge at full trial and it would be unsafe to issue a general gag order at this stage.

13. The prayer for an order compelling the Respondent to relinquish her company ID, company documents and property falls within the purview of a mandatory injunction. Such an order will only issue at the interlocutory stage in exceptional circumstances, which have not been established in this case. This prayer is therefore also declined.

14. On the whole, the Claimants' Notice of Motion dated 9<sup>th</sup> June 2021 fails and is dismissed with costs in the cause.

15. The interim orders granted on 10<sup>th</sup> June 2021 are vacated.

16. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF NOVEMBER 2021**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Abenga with Miss Nabiringe for the Claimants

No appearance for the Respondent