



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CASE NUMBER 539 OF 2016

ANDREW MUHOLO TEYIE.....CLAIMANT

VERSUS

NATION MEDIA GROUP LIMITED.....RESPONDENT

**JUDGMENT**

1. In his amended claim dated 14<sup>th</sup> July, 2017 the claimant in brief averred that he was employed by the respondent on 30<sup>th</sup> May, 2013 as an Investigative Editor in the Editorial Department at a salary of Kshs 294,400/= and a house allowance of Kshs 105,600/=. According to him he discharged his duties faithfully until 4<sup>th</sup> March, 2016 when his service was terminated on account of alleged redundancy. the claimant did not agree that the necessary conditions for redundancy were met and therefore averred that the termination was grossly unfair and motivated by reasons other than redundancy.

2. The respondent on its part pleaded in brief that following reorganization of the Editorial Department and news gathering operations, the claimant's position of Investigative Editor among other positions was rendered redundant which therefore necessitated the termination of his service. The respondent further denied that the claimant's service was illegally and unfairly terminated. The parties agreed to dispense with oral hearing and instead filed submissions.

3. Mr Elkington for the Claimant submitted in the main that in his statement the claimant set out the circumstances leading to the alleged unlawful redundancy. According to the claimant his duties concerned sourcing and writing exclusive stories as well as mentoring and coaching young investigative journalists. As such, the claimant wrote stories that may had not gone down well with certain people involved or sympathetic those engaged in corruption. The claimant further alleged that the change in guard at the respondent in 2015 meant new bosses appeared to have different interests to protect. The claimant was consequently frustrated in his line of duty and he came to learn that Mr Tom Mshindi, the Editor in-Chief was behind his woes.

4. The stories that the claimant pursued revolved around megacorruption in NYS, KRA as well as Eurobond saga led to bad blood between the claimant and some of his superiors particularly the Editor-in-Chief who asked him to go slow on sensitive storied particularly NYS and Eurobond issue.

5. According to claimant, matters came to a head on 4<sup>th</sup> March, 2015 when the Editor-in-Chief Mr Tom Mshindi in presence of the Mr David Kiambi summoned him to his office and told him his pension had been scrapped since the respondent had no money. He further stated that attempts to request to be redeployed were met by strong response that there was no finance to maintain his position. He was consequently handed a letter terminating his service.

6. The claimant made reference to an email dated 2<sup>nd</sup> December 2015 sent by Mr Tom Mshindi in which he was instructing his troops to desist from further reporting the Eurobond saga since a clarification had been made as to how the money was used and was of the view that the story was not progressing.

7. According to Mr Elkington for the claimant declaration of redundancy against the claimant did not follow the requirements of section 40 of the Employment Act since the claimant was never informed of any impending reorganization nor was the Minister for Labour informed. In support Counsel relied on the case of **Thomas De La Rue (K) Ltd Vs David Opondo Omutelema Civil Appeal No 65 of 2012** where the court set out the requirements of section 40 (a) and (b) and stated that where an employee is not unionisable he is not entitled to a lesser notice than unionisable employees. The claimants termination letter was with effect immediately.

8. Mr Muiruri for the respondent on his part submitted that redundancy was a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer. This position according to counsel was fortified by the Court of Appeal in the case of Kenya airways Ltd Vs Aviation & allied workers Union 2014 eKLR. According to counsel a strategic decision to optimize the respondent's Editorial Department and new gathering operations necessitated its reorganization resulting in abolition of several positions including the claimants. Counsel submitted that the responded merely exercised its right to make commercial decisions

on how its operations are run and cannot be castigated for that.

9. Redundancy is a form of termination of employment and where the court comes to a finding that it was not properly carried out a finding of unfair termination would be made.

*Section 40 of the Employment Act provides in material part as follows:*

*40 (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions.*

*(a) - not relevant*

*(b) Where an employee is not a member of a trade union, the employer notified the employee personally in writing to the labour officer.*

10. By a letter dated 4<sup>th</sup> March, 2016 the respondent informed the claimant of its decision to terminate the claimant's service on account of redundancy with effect from the same day. The respondent then proceeded to inform the claimant of his terminal dues including payment in lieu of notice redundancy. No reason was given why the respondent could not give the claimant a months' notice and instead offered to pay him in lieu of notice.

Section 40 (1) (b) read together with subsection (a) requires that an employee being declared redundant is entitled to be given reasons for and extent of the intended redundancy not less than a month prior to the date of the intended termination on account of redundancy.

11. The Court of Appeal in the case of **Thomas De La Rue's** case referred to earlier stated that section 40 (b) does not stipulate notice period as in the case in 40 (a) but in the court's view, a purposive reading and interpretation of the statute would mean the same notice period is required in both situations. This section further does not provide for payment in lieu of redundancy notice. The logic behind it is because redundancy is termination of employment through no fault of an employee hence there should be no rush to get rid of an employee through payment in lieu of notice unless the employee himself so elects. The purpose of the notice period is to enable the parties discuss the options including but not limited to redeployment and also allow the employee to readjust to a possible life without employment.

12. The respondent did not provide any reason why this mandatory requirement of the statute was not met. This therefore lends some measure of credence to the allegations by the claimant that his separation from employment may have been as a result of the discomfort over some of the stories he was following was causing.

13. In conclusion the court finds that the termination of the claimant's service was unfair. The court therefore awards him ten months salary as compensation for unfair termination of service being Kshs 4,265,390/=. This award shall be subject to taxes and statutory deductions but shall attract interest at court rates from the date of judgement till payment in full.

14. The claimant shall further have costs of the suit.

15. It is so ordered.

**Dated at Nairobi this 24<sup>th</sup> day of May, 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 24<sup>th</sup> day of May, 2019**

**Abuodha J. N.**

**Judge**

**In the presence of :-**

.....for the Claimant and

.....for the Respondent