REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 415 OF 2014

ROSEMARY JUMBA.....1ST CLAIMANT

JANE ROABAI OKAALO.....2ND CLAIMANT

MILLY SDOLI IMBATI.....3RD CLAIMANT

JUDY NZALI KATISYA.....4TH CLAIMANT

EZEKIEL UBAYO.....5TH CLAIMANT

MARTINA NDAMBUKI.....6TH CLAIMANT

SIPRINE AOKO OMOLLO.....7TH CLAIMANT

JULIUS KYAMBO.....8TH CLAIMANT

PETER KITONGA.....9TH CLAIMANT

MICHAEL MUTUA.....10TH CLAIMANT

JULIUS KIOKO.....11TH CLAIMANT

VERSUS

GURU NANAK RAMGHARIA.....RESPONDENT

JUDGMENT

1. The claimant union averred that on 21st November, 2013 it received a letter from the respondent dated 16th November, 2013 concerning notice of intention to declare redundant, the claimant's members working in the house keeping and laundry department.

2. The claimant replied to the said letter vide a letter dated 22nd November, 2013 requesting the respondent to hold the redundancy pending the determination of an issue that had been filed in court about unfair targeting of union members by the respondent. The respondent never responded to the claimant's concern and proceeded to declare the claimant's members aforesaid redundant via a letter dated 1st January, 2014. According to the claimant the respondent further mislead the affected employees to receive payment cheques and certificate of service deceiving the affected employees that they would be reconsidered for re-engagement once they collect the pay. The claimant therefore reported a trade dispute to the Minister and the Ministry appointed a conciliator who after hearing the parties made his recommendations which were agreeable to the claimant but were rejected by the respondent.

3. The respondent on its part confirmed issuing the redundancy notice to the claimant union and that the same letter was copied to the Chief Industrial Relations Officer – Nairobi.

4. The respondent further denied receipt of the letter dated 22nd November, 2013 from the claimant union and that the only response received was the letter dated 18th December, 2013 by the Labour Commissioner advising them to ensure the procedures provided in the CBA and Labour Laws were followed while executing the intended redundancy.

5. Further, the respondent pleaded that there was no court order stopping the redundancy exercise and that the affected employees were not

party to any existing court case with the respondent. According to the respondent, the redundancy was carried out in full and strict compliance with the applicable laws and regulations specifically section 40 of the Employment Act.

6. Further the affected employees voluntarily and unconditionally accepted and received their final dues and signed discharge forms confirming that they had no claims whatsoever against the respondent. That having led the respondent to believe that they would not make any claims against it and receiving their full dues, the affected employees were estopped both by contract and conduct from filing the suit. The respondent further averred that the union instituted the suit without authority or instructions of the affected employees and that the suit was not about redundancy but was meant to advance the union's own selfish interest. The respondent also stated that at the time of appointing the conciliator and calling the meeting the redundancy exercise had been completed hence there was nothing to be resolved by conciliation. The conciliator's findings and recommendations were therefore outside his mandate.

7. In his submissions Mr Nyasimi for the claimants submitted that it was highly unlikely that the department of housekeeping and laundry could be unnecessary in an institution offering medical services and medication was indispensable from cleanliness. According to counsel there two departments were core to the running of the respondent's business.

8. Ms Rashid on the other hand submitted that section 40 of the employment Act permitted the employer to terminate the contract of an employee by declaring them redundant.

9. Section 40 (1) of the employment Act makes provisions for declaration of redundancy. A declaration of redundancy shall not be done unless where the employer is a member of a union, the employer has notified the union and the area labour officer. The notification should contain reasons for and the extent of the intended redundancy. It must also be issued at least one month prior to the date of the intended date of termination on account of redundancy.

10. Additionally and of relevance to this case, the employer must in selection of employees to be declared redundant have due regard to seniority in time and to the suitability and reliability of each employee affected by the redundancy.

11. In compensating the employees declared redundant the Act requires where there is a CBA setting out the terminal benefits payable upon redundancy, no employee has been placed to disadvantage by reason of being a union member. Other benefits payable are leave dues, one month's wages in lieu of notice and severance pay at the rate of not less than fifteen days pay for each completed year of service.

12. Redundancy is not new in business life cycle. All businesses in the modern day and age undergo restructuring, reorganization and appraisal to remain profitable and competitive in their respective fields. It is a process that the court cannot interfere with save for cases where it is carried out in breach of the law.

13. Section 2 of the Employment Act defines redundancy to mean loss of employment, occupation or career by involuntary means through no fault of an employee involving termination of employment at the instance of the employer, where the services of an employee are superfluous. Redundancy also include practices commonly known as abolition of office, job or occupation and loss of employment.

14. It is not in dispute that the respondent notified the claimant union of the intended redundancy through a letter dated 16th November 2013. In that letter the respondent gave the reasons for redundancy as part of the restructuring of the respondent's workforce and the need to improve the quality of services to their clients. From the letter, it would seem the respondent did not consider anymore, the housekeeping and laundry departments as one of its core services hence the decision to declare them redundant. This letter was copied to the Chief Industrial Relations Officer.

15. By a letter dated 18th December, 2018 a Mr. J. M. Kiraguri for Labour Commissioner responded and advised the respondent to strictly follow the procedures provided for under the CBA and Labour Laws applicable.

16. The claimant on the other hand through their letter dated 22nd November, 2013 informed the respondent of a pending court case being cause No. 113 of 2013 which had an order requiring the maintenance of the status quo. The claimant therefore was of the view that discussing the intended redundancy would attract contempt of the court order and amount to *sub judice*. The union thus requested for putting on hold the intended redundancy.

17. The respondent however proceeded to implement the redundancy stating that there was no court order stopping the redundancy and that the matter pending in court was different and did not involve the employees intended to be declared redundant.

18. By a letter dated 16th January, 2014, the claimant union wrote to the Minister informing the Minister of the existence of a trade dispute which was stated as unlawful intended redundancy contrary to section 40 of the Employment Act and clause 10 of the CBA. In the letter the union stated that the parties had exhausted their own voluntary negotiation machinery but had failed to reach an amicable solution.

19. A Mr Mbae was appointed as the conciliator. In their representations before the conciliator, the claimants stated among others that the respondent declared the workers concerned redundant in total disregard of a court order. The union further contended that the declaration of the redundancy was to instil fear among the employees and kill the union's representation at the respondent's since the laid off employees were all union representatives. It was the union's submissions that since the department of housekeeping and laundry had been outsourced and not abolished the employees should be unconditionally reinstated as the purported redundancy was not necessary.

20. The respondent on its part submitted before the conciliator that it informed both the union and the County Labour Officer of the intended redundancy and that its management adhered to clause 15 of the CBA on redundancy and paid all the affected staff their dues as per the CBA. They further submitted that cause number 1113 of 2013 involved 10 staff who were on fixed term contracts and refused their offer on same.

21. The conciliator in his finding stated that both parties obey the court order which directed that the status quo be maintained.

22. There would seem to be no allegation that the respondent did not follow the provisions of section 40(1) of the Employment Act or clause 15 of the CBA. The issue seems to be around a court order issued in Cause No. 1113 of 2013. Whereas the claimant alleges the court order froze the intended redundancy, the respondent stated that this cause concerned some 10 employees and had nothing to do with the redundancy process. The claimant had the evidentiary burden to produce the alleged court order and or pleadings in Cause No. 113 of 2013 for the court's perusal to see if indeed it is concerned with the redundancy the subject matter of this suit.

23. The court is therefore unable to appreciate the connection between the two. The claimant having heavily relied on the fact that the redundancy was declared in contravention of a court order stopping the same, has failed to discharge its evidentiary burden. In any event if it is indeed true that the redundancy was carried out in disregard of a court order the claimant should have moved the court appropriately in that cause and not filed a fresh suit.

24. To that extent the court on the material laid before it is unable to find that that redundancy was carried out contrary to section 40 (1) of the Employment Act since the claimant apart from allegation of contempt of court which it failed to prove, has not shown in what way the respondent failed to comply with the provisions of section 40 (1) of the Employment Act.

25. The claim is therefore found without merit and is hereby dismissed with costs.

26. It is so ordered.

Dated at Nairobi this 14th day of June, 2019

Abuodha J. N.

Judge

Delivered this 14th day of June, 2019

Abuodha J. N.

Judge

In the presence of:-

…….…… for the Claimant and

…….. for the Respondent