



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO 2542 OF 2016**  
**KENYA UNION OF JOURNALISTS.....CLAIMANT**  
**VERSUS**  
**STANDARD GROUP LIMITED.....1<sup>ST</sup> RESPONDENT**  
**THE NATION MEDIA GROUP.....2<sup>ND</sup> RESPONDENT**  
**RULING**

1. In this application brought by Notice of Motion dated 3<sup>rd</sup> January 2017 the Claimant seeks the following orders:

- a. A temporary injunction restraining the 2<sup>nd</sup> Respondent from effecting the notice of redundancy dated 21<sup>st</sup> December 2016;
- b. A declaration that item No 2 of the proposed condition for redundancy is defective, discriminatory and unconstitutional as the Respondent has singled out the workers to be compensated;
- c. An order directing the 2<sup>nd</sup> Respondent not to effect the intended notice of redundancy dated 21<sup>st</sup> December 2016 until the vacuum in terms of the Collective Bargaining Agreement (CBA) is resolved.

2. The application which is supported by the affidavit of Erick Oduor, sworn on 3<sup>rd</sup> January 2017, is based on the following grounds:

- a. The CBA for 2014-2016 expired on 31<sup>st</sup> March 2016;
- b. Negotiations for a new CBA commenced but hit a deadlock, thereby creating a vacuum in terms of wages and terminal benefits;
- c. The affected members of the Union have filed the claim herein seeking finalisation of a new CBA for 2016-2018;
- d. While the claim is still pending, the 2<sup>nd</sup> Respondent has issued a notice to declare some employees redundant;

e. In the notice, the 2<sup>nd</sup> Respondent has offered to compensate the employees being declared redundant, but there is a vacuum in terms of the CBA, which is a guide for compensation in the proposed notice;

f. The employees are owed salary arrears from 1<sup>st</sup> April 2016 because of the CBA vacuum and unless there is a new CBA in place effective 1<sup>st</sup> April 2016, there is no standard basis to guide the parties in the compensation figures.

3. The 1<sup>st</sup> Respondent's response is contained in a replying affidavit sworn by its Senior HR Business Partner, Joy Pamela Kaguri, on 21<sup>st</sup> March 2017. She states that parties met on 31<sup>st</sup> March 2016, 21<sup>st</sup> April 2016 and 24<sup>th</sup> May 2016 for purposes of negotiating a new CBA.

4. Pursuant to the negotiations, the following clauses were concluded:

a. Annual leave of 41 days;

b. Leave travelling allowance increased from Kshs. 11,076 and Kshs. 12,738 to Kshs. 13,375 for the first year and Kshs. 14,044 for the second year;

c. Severance pay on redundancy at the rate of 30 days for every year worked;

d. Gratuity of 30 days for every year worked.

5. Kaguri further states that during the meeting of 24<sup>th</sup> May 2016, the Claimant insisted on a wage increment of 17% for both years, whereas the Respondents proposed an increment of 5.5%. In the Respondents' view, the Claimant's proposal was untenable mainly due to the tough economic state of the country in general and the business/industry in particular.

6. Kaguri adds that the Company does not have the financial capacity to implement a wage increment beyond 6%. She avers that the Company had registered losses in the year 2015, owing to several changes in the industry that had necessitated heavy and costly infrastructural investment. The Company's revenue streams had also been negatively impacted.

7. In light of the foregoing the Company had in 2015, undertaken a staff rationalization exercise leading to loss of approximately 200 jobs. Kaguri depones that in spite of the tough economic environment, the Company had awarded performance based salary increment at 3%-6% to all employees, including the Claimant's members. Further, in the years 2014 and 2015, the unionisable employees had received general wage increments of 11% and 12% respectively.

8. On behalf of the 2<sup>nd</sup> Respondent a replying affidavit and a further affidavit were sworn by its Head of Legal Department, Sekou Owino, on 13<sup>th</sup> January 2017 and 29<sup>th</sup> March respectively. Owino states that the Claimant and the Respondents entered into a CBA which commenced on 1<sup>st</sup> April 2014 and expired on 31<sup>st</sup> March 2016. The parties had since been engaged in negotiations for a new CBA, but are but to agree on the issue of a general wage increment.

9. Owino depones that due to decline in business and profitability, which had affected the media industry, the 2<sup>nd</sup> Respondent was in the process of implementing a new strategy and restructuring its operations to mitigate the said decline.

10. In line with the restructuring, the 2<sup>nd</sup> Respondent had on 21<sup>st</sup> December 2016, issued a notice of intended redundancy to the Claimant. It is the 2<sup>nd</sup> Respondent's position that in issuing this notice, it had complied with the law relating to termination of employment on account of redundancy.

11. Owino believes that the Claimant's application is premature as the Claimant had not raised any

objection to the notice of intended redundancy. Moreover, the Claimant had not tendered any evidence to show that in issuing the notice of intended redundancy, the 2<sup>nd</sup> Respondent had breached the law. The 2<sup>nd</sup> Respondent maintains that the mere fact that the CBA had lapsed does not in any way preclude it from exercising its rights as an employer, to restructure its business operations, in accordance with the law.

12. Regarding the assertion by the Claimant that the absence of a current CBA creates a vacuum, Owino avers that no such vacuum exists as the benefits to be paid to the employees declared redundant will be determined in accordance with individual contracts of employment and the Employment Act.

13. This is an omnibus application by which the Claimant essentially seeks the Court's intervention towards conclusion of a new CBA. From the submissions filed on behalf of the Claimant on 3<sup>rd</sup> March 2017, it would appear that the redundancy in issue has already taken place. The Claimant however submits that the dues payable to the affected employees should be pegged on the yet to be concluded CBA.

14. My reading of the pleadings and submissions by the parties is that this is an economic dispute, on which the Court must take not only the parties' evidence but also expert opinion from the Central Planning and Monitoring Unit (CPMU) of the Ministry of Labour. In its written submissions filed on 28<sup>th</sup> March 2017, the 1<sup>st</sup> Respondent made reference to the decision in *Kenya Building, Construction, Timber, Furniture & Allied Industries Employees Union v Galaxy Timber Company Limited [2014] eKLR* where it was held that when faced with a dispute concerning a CBA, the Court must consider the economic interests of the employer alongside social justice to the workers.

15. This is the correct position as I understand it and in my view, the issues raised in such a dispute cannot be determined in an interlocutory application such as the one now before. For this reason alone, the Claimant's application dated 3<sup>rd</sup> January 2017 is declined with no order for costs.

16. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28<sup>TH</sup> DAY OF JULY 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ogeto for the Claimant

Miss Babu for the 1<sup>st</sup> Respondent

Miss Ogula for the 2<sup>nd</sup> Respondent