



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NUMBER 1266 OF 2014**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL  
INSTITUTIONS AND HOSPITAL.....CLAIMANT**  
**VERSUS**  
**SOCIAL SERVICE LEAGUE M.P SHAH HOSPITAL.....RESPONDENT**

**JUDGEMENT**

1. The claimant union pleaded that on or about 27<sup>th</sup> June, 2014 the respondent served the claimant with a letter dated 26<sup>th</sup> July, 2014 notifying them of intention to declare one Christine Wairimu Kyanui (grievant) redundant purporting that her position was no longer tenable since they had trained doctors and nurses to do the same job.
2. The claimant through a letter dated 1<sup>st</sup> July, 2014 requested to meet the respondent for purposes of discussing the said redundancy. The parties held a tripartite meeting on 22<sup>nd</sup> July, 2014 at which the respondent failed to prove the reasons for the intended redundancy and it was agreed that the grievant be redeployed to another department. The respondent thereafter went silent as the effective date for the redundancy was approaching leaving the claimant with only option of turning to court under certificate of urgency.
3. The claimant submitted that it was unfair and gross misconduct of the law for the respondent to terminate the services of the grievant masquerading to have abolished her position after fraudulently acquiring her knowledge and using her to train others.
4. The respondent on its part pleaded that it served a letter dated 26<sup>th</sup> June, 2014 in accordance with the law. The respondent further pleaded that it was scandalous for the claimant to paint a picture that the respondent flouted the law by not giving the 30 day's notice as required by law and CBA between the parties.
5. The respondent further pleaded that the procedures performed by the grievant could be performed by doctors and nurses who perform other duties in addition to the procedures that were being performed by the grievant unlike the grievant who could only perform these particular duties. The respondent therefore deemed it fit to declare her redundant. The grievants' position is the only one which was declared redundant under the LAST IN FIRST OUT rule out of two performing plaster technician duties. According to the respondent, all necessary details and explanation were discussed with the claimant's representative at a meeting held on 22<sup>nd</sup> July, 2014.

6. The relying affidavit of one Falguni Chudasama filed on 12<sup>th</sup> August, 2014 in response to the interlocutory application dated 3<sup>rd</sup> July 2014 detailed what in the view of the respondent, was the procedure followed before declaring the grievant redundant. The deponent further attached the redundancy notices issued to the grievant and to the claimant as the grievants' union. She further attached the minutes of a meeting held on 22<sup>nd</sup> July, 2014 concerning the grievants' redundancy issue. The meeting according to the minutes was attended by the claimant's representative Mr Stanslaus Buleti among others.

7. In their response to the respondent's replying affidavit, the claimant admitted receiving the notice of intention to declare the grievant redundant but claimed the same was issued maliciously and in serious contravention of section 40(9) of the Employment Act, 2007. According to the claimant, the notice was issued after unduly influencing the grievant to accept the redundancy on 25<sup>th</sup> June, 2014.

8. The claimant further did not dispute the minutes attached to the respondent's affidavit, all the claimant said was that they did not reflect what was discussed without showing to what extent or in what way did the minutes fail to disclose what was discussed. Redundancy and termination of employment through dismissal or normal termination are natural elements and normal events in employment relationship. They are decisions taken by employers in the interest of the business where they are invoked properly the court cannot interfere.

9. In this particular case, the claimant does not seem to dispute the process followed by the respondent in declaring the grievant redundant. What they seem to question is the motive behind the declaration of redundancy. The reason given by the respondent was that the work done by the grievant had become superfluous and unsustainable because it could be done by doctors and nurses at no extra cost to the respondent. The respondent also pointed out that as a result, the number of procedure performed by the grievant had become low hence could not be rationalized with her salary.

10. The letters of declaration of redundancy dated 28<sup>th</sup> and 26<sup>th</sup> June, 2014 set out the heads of payment upon declaration of redundancy as provided for under section 40 of the Employment Act. Further the respondent through memorandum of response to the claim and replying affidavit of Falguni Chudasama stated the procedure followed in declaring the grievant redundant and the reason for taking such action. The claimant may not agree with the reason given for declaring the grievant redundant.

11. However, as stated in this judgement, termination of employment is a management discretion which the court cannot interfere with if carried in accordance with the contract of employment and relevant labour laws. The reasons need not be convincing to everyone else provided they are lawful and justifiable grounds upon which a reasonable employer can terminate an employment contract.

12. The court has considered the reasons and process followed in declaring the grievant redundant and is persuaded that the respondent complied with the law. The claim is therefore found without merit and is hereby dismissed with costs.

13. It is so ordered.

Dated at Nairobi this 29<sup>th</sup> day of September, 2017

**Abuodha J. N.**

**Judge**

Delivered this 29<sup>th</sup> day of September, 2017

**Abuodha J. N.**

**Judge**