



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO 815 OF 2015

KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL

INSTITUTIONS AND HOSPITAL WORKERS (KUDHEIHA)CLAIMANT

VERSUS

THE AGA KHAN UNIVERSITY HOSPITAL NAIROBI RESPONDENT

JUDGEMENT

1. ON 15TH May 2015, the Claimant, Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers (KUDHEIHA), filed the Memorandum of Claim (Claim) and the listed issues in dispute were;

- a. *Illegal declaration of redundancy*
- b. *Violation of the provisions of Collective Bargaining Agreement (CBA) and the Employment Act*

2. With the Claim, the Claimant also moved the Court through Notice of Motion and seeking urgent orders to stop the Respondent from proceeding with the redundancy process vide notice issued on 14th May 2015. The Claimant also sought to restrain the Respondent from subverting the provisions of the v with regard to redundancy provisions. In the interim, the Court granted the orders sought by the Claimant. The Respondent subsequently issued another notice on 10th June 2015 prompting the Claimant to revert back to Court under Notice of Motion on 17th June 2015 seeking urgent orders to restrain the Respondent from effecting this notice pending hearing of the main suit herein. Upon hearing both parties the Court noting the issues at hand directed that the main suit should proceed for hearing to address the issues in dispute.

The claim

3. The Claimant is a trade union in the domestic, hotels, educational institutions and hospital sectors while the Respondent is an institution of higher learning registered by the Commission of University Education in Kenya. Parties herein have a Recognition Agreement and a Collective Bargaining Agreement dated 29th August 2014. On 15th April 2015 the Claimant wrote to the Respondent asking them not to proceed with the intended redundancy of its members by outsourcing the services its members who are in the housekeeping, laundry, service attendants and outreach/messenger departments. The Respondent replied noting the claimant's claims were baseless and speculative. On 21st April 2015 the Claimant wrote again to the Respondent noting the violation of the Collective Bargaining Agreement and on 14th May 2015 the Claimant learnt of a notice issued by the Respondent to its members declaring

redundancy. The Respondent had not followed the Collective Bargaining Agreement in issuing the Notice of redundancy; communication of the notice was directly to Claimant members against the Collective Bargaining Agreement and the Employment Act; the notice was ambiguous as it sought to get views from Respondent members without the involvement of the claimant; and due process had not been followed.

4. The claim is also that the Respondent failed to follow the provisions of section 40 of the Employment Act in issuing the redundancy notice. The Respondent violated the v in issuing the redundancy notice to the Claimant members instead of issuing the same to the Claimant. The effect of such notice is that the Claimant members shall lose their jobs unfairly and hence abuse the v in force and as registered by the Court. Any redundancy notice should be to the clamant under the Collective Bargaining Agreement and Recognition Agreement between the parties.

5. The Claimant is seeking the following orders;

1. *An order declaring that the respondent's notice dated 14th May 2015 issued to the members of the Claimant concerning the intended redundancy as null and void;*
2. *An order compelling the Respondent to abide by the provisions of the parties dully registered Collective Bargaining Agreement.*
3. *An order declaring that the Respondent has not justified or crystallised the reason as to why the redundancy should be carried out at its work place and therefore the intended redundancy is illegal;*
4. *An order that the Respondent desist from interfering and meddling with the members of the claimant;*
5. *Costs of the suit.*

6. To support the claim and In evidence, the Claimant called the Njoroge Mwangi a shop steward, John Okumu the Branch chairman and Albert Njeru the General Secretary of the Claimant trade union.

7. Mr Mwangi testified that he has worked with the Respondent for the last 9 years. He was elected as shop steward in 2013. On 14th May 2015 he was called by the Human Resource (HR) officer for a meeting. He called the Secretary Work Committee to inform him of the meeting as he could not immediately attend due to his work schedule, he only made it to the meeting at 9.30am. In the meantime, he received so many calls from different members seeking to know what was going on as they had received redundancy notices. When he finally made it to the meeting the Human Resource issued him with a notice and upon reading it, he realised it related to a redundancy. Other employees had already received similar notices via emails. The notices were issued simultaneously. He did not know at this point if the Claimant had been issued with the same notice as the Claimant should have been the primary recipient of such notice under the Collective Bargaining Agreement.

8. The witness also testified that in December 2014, there was rumours that the Respondent was going to outsource its services. He was part of the team that met the Respondent Chief Executive Officer (CEO) and asked him to confirm. The CEO denied such an issue and further informed the witness and a Claimant representative that they were doing cost analysis for the Respondent and that they should resume their duties as assigned. That a meeting would be called in February 2015 to share the cost analysis so that they can contribute and as staff they can share in ensuring cost-effectiveness of Respondent services.

9. That in mid-February 2015, there was a new rumour that the Respondent was going to outsource some services. He informed the Claimant and the Secretary General wrote to the Respondent on this issue of outsourcing. The Respondent reply was that this was speculation and baseless. A follow up meeting with the CEO, he confirmed that these were just rumours and the employees should resume their duties. The witness then proceeded and reassured employees and Claimant members that there was not going to be any outsourcing or redundancy. However, he noted that this was affecting employee productivity and noting the very sensitive sector within which the Respondent is under, there was urgency in reassurance of all employees. The Claimant has over 1000 members within the Respondent work force. Before they were 542 but more have been recruited but the Respondent has refused to recognise this fact.

10. Mr Mwangi also testified that when they met the CEO he confirmed that no employee would be declared redundant. Together with other employees the witness proceeded to help with the Respondent make economic analysis and they made proposals and it was agreed that no employee would be laid off. The Respondent services are good and there is full beds occupation and the current employees are needed to serve the entire clientele. Some departments are forced to put clinics forward as the Respondent cannot take all the pending patients seeking services. To thus make the Respondent services cost-effective, the current employees are required and are necessary.

11. In cross-examination, Mr Mwangi testified that in December 2014, the CEO talked to them and reassured them that there would be no redundancy and that they should resume their duties. That the only thing being done was the cost analysis. He understood this to mean the analysis of costs in purchase of medicines, consumables like tea and food stuffs and the salaries paid. Where employees are concerned, Claimant members have a Collective Bargaining Agreement and in the event of a redundancy, the notice has to go to the Claimant 2 months before the same can commence. The Claimant Secretary General should receive such a notice. After this meeting, the Respondent CEO was to call for another meeting in February 2015. However, on 14th May 2015 a notice was issued to the employees and the Claimant was copied for information. It was called a consultation meeting. The notice noted that there was a possibility of redundancy. Once the notice was issued, a meeting was held for the Respondent to explain it but on 15th May 2015 the Claimant challenged this notice in court. There was an order stopping other meetings following the notice. The witness has not attended any other meeting called by the Respondent with regard to this notice and redundancy.

12. The second witness for the Claimant was **John Okumu** the chairperson of the branch level. His evidence was that, noting the contents of the statement filed by Judith Oduge for the respondent, he attended a consultative meeting organised by the Respondent but not in his capacity as the Claimant branch chairman. On 14th May 2015 he got a meeting notice and on 15th May 2015, the Court issued orders stopping any further action based on this notice and since, he has not attended any further meeting. There was a Court order stopping any further consultations on the process noted in the notice dated 14th May 2015.

13. He also testified that in December 2014 the CEO told employees that there would be a cost analysis and as employees they gave proposals on how to reduce costs. It was an informal process/meeting and there were no records kept. He can recall four (4) issues that arose;

1. Materials department – procurement questions on how the Respondent purchases were done especially medicines in purchased in bulk should have been purchased directly
2. Employment of expatriates – such employment and packages given were higher than local employees and thus petitioned the CEO top cut off on expatriates as there was no rationale in hiring them;
3. Marketing – that there was poor marketing of Respondent services;
4. Organisational structure – this required several changes especially six (6) things could change particularly the roles undertaken by the shift leader; nursing relocation; team leader; unit manager; programme administrator – all these had duties that were intertwined especially the hiring of a clinical nursing. A unit manager held similar roles with other officers in one unit. The employees in consultation with their union would have helped bring out such issues and areas where costs would have been reduced.

14. Mr Okumu also testified that the Claimant union had not been given a chance to look at their member proposals, the CEO also did not give the employees a chance to look at the proposals made before the notice of 14th May 2015 was issued. The CEO was away for two weeks and never called for consultations.

15. In cross-examination, Mr Okumu testified that the memo issued Ms Dorothy and Abiayo describe the informal meeting held and the matters noted were found by the employees as crucial for the Respondent to address while reducing staff before effecting any lay off. There was duplication of roles

and the employees offered suggestions that could address the same in the analysis of cost-effectiveness. Redundancy relate to positions made obsolete. There is need for reorganisation especially the employees who are nurses can undertake other duties/roles. The Claimant union did not boycott consultations as Claimant and its members relied on the Court order.

16. The Claimant called a third witness, Mr Albert Njeru the Claimant Secretary General. He testified that he got information that the Respondent had an intended redundancy and on December 2014 he wrote to the Respondent raising concerns that do move with any redundancy would be illegal and would be contrary to the Collective Bargaining Agreement between the parties. The Respondent replied and stated that such information as he had stated was not a fact and it was a mere allegation. The Respondent also stated that he should not create chaos or incite employees, he should stop intimidating or harassing its management. The Respondent then denied that there was no redundancy or any outsourcing. The Respondent further stated that they would not engage in any claims by the Claimant based on threats.

17. On 21st April 2015, he wrote to the Respondent again raising concerns and in reply to letter dated 17th April 2015 by the Respondent. The witness tried to impress on the Respondent that the intention of the union was not to create chaos but the basis of information shared related to the Collective Bargaining Agreement being respected. For any outsourcing to take place, the Collective Bargaining Agreement provided for mutual Agreement by parties. On redundancy, the Collective Bargaining Agreement was specific.

18. Mr Njeru also testified that the redundancy notice dated 14th May 2015 was not addressed to him as required. Under the Collective Bargaining Agreement any redundancy was to be addressed to the Claimant one month in advance of the intended redundancy. Therefore, on 14th May 2015 when the notice was issued to the Claimant members and recalling the alarm the Claimant had earlier raised, this confirmed the Claimant fears that the Respondent was going to declare redundancies without involving the Claimant. There were no prior discussions as per the Collective Bargaining Agreement and thus decided to move the Court seeking urgent protection orders.

19. There was a subsequent notice dated 16th June 2015 where the Claimant was invited for negotiations. This notice was done on similar grounds as the previous one/issue of redundancy. Mr Njeru stated that he was not able to attend the meeting as he had prior engagement. He also noted the meeting was called without regard to the ongoing case in Court and therefore he could not attend the meeting.

20. Mr Njeru also testified that Claimant members were left to decide as whether the Claimant could attend meetings with the Respondent so as to represent their interests. Such members were at liberty to attend the consultations. The Claimant does represent the interests of its members upon consultation and thus act for its members. In this case, based on member instructions, the Claimant moved the Court to seek protection against the proposed redundancies by the Respondent.

21. In cross-examination, Mr Njeru testified that he received notice dated 10th July 2015 on potential redundancy. This notice was not per the v. The notice of redundancy required by the Collective Bargaining Agreement and as indicated in the Memorandum of Claim is not what was issued by the Respondent. Clause 11 of the Collective Bargaining Agreement require such notice be issued 2 months prior; should be in writing; and before any action on any redundancy can take place. This requirements are mandatory under clause 11 of the Collective Bargaining Agreement. The employees at the Respondent are also entitled to a notice of redundancy but any such notice should be preceded by the notice issued to the Claimant. The Claimant consults with its members in the Respondent employment. The employees of the Respondent have a work council which represents all of them. The Claimant also consults with the works committee.

22. Mr Njeru also testified that he is aware that the existing labour laws are that for the Respondent to bring remove existing labour force and bring new ones is an unfair labour practice. The concept of unfair labour practice is to be seen from the Collective Bargaining Agreement and the law. Outsourcing is taking place in Kenya and where done unfairly, the courts have declared this illegal. The law has defined what a

redundancy is – it is the process where an employer decides to remove employees so as to address an economic need which amount to a termination. There is redundancy in outsourcing a redundancy can be done so as to outsource. However, an outsourcing cannot justify a redundancy as this would be an unfair labour practice. To hire cleaning through outsourcing so as to terminate Claimant members would be unfair practice. Outsourcing has not been barred or outlawed by the constitution or the Employment Act. There is no mention of the term but the Court has made decisions on this issue. The Recognition Agreement mentions outsourcing, the methods to be used while the Respondent is outsourcing. Such Recognition Agreement gives the Claimant the sole role of representing employees to raise any issue with the Respondent issues which May have negative impact on them and therefore the question of outsourcing May be barred by the Recognition Agreement as it says, the Claimant reserves the right to negotiate the procedures to be followed. The Claimant has the right to question any practice undertaken against its members within the Respondent employment. The Respondent should consult with the Claimant before taking any negative action against its members and this relate to outsourcing, redundancy or termination as this is the essence of the Collective Bargaining Agreement.

23. Mr Njeru also testified that the Respondent organisational assessment document is new to him. He had just seen it in court. He however agreed that the Respondent had the right to undertake management decisions. Where the Respondent needed to reduce costs, this was within their rights but he is not aware that the Respondent has done such an analysis. An employer with excess employees can reduce them through a redundancy. By 7th august 2015, the Claimant had 781 members in the Respondent employment. He is not aware of the total number work force to do a ratio. He is not aware that the Respondent has outsourced some services. The Claimant has a right to be consulted by the Respondent when its members are affected.

24. When the Claimant received notice dated 14th May 2015, the Court stopped the same and the *status quo* was to be maintained until the matter was heard. The Respondent has issued subsequent notices but he has been unable to attend.

Defence

25. In defence filed on 10th August 2015, the Respondent states that on 30th October 2002 the parties herein entered into a Recognition Agreement to regulate the relations between them in the interest of members and management. Subsequently, a Collective Bargaining Agreement was executed between the parties the last such being dated 29th August 2014. On 15th April 2015, the Claimant wrote to the Respondent demanding that they should not outsource any of its services and/or declare redundancies and threatened chaos or wrath upon the Respondent in the events these demands were not met. It is the prerogative of the Respondent to determine the appropriate model to their business to reduce costs and increase access to its services to the community which May include outsourcing of non-core services when deemed necessary. The Respondent replied to these threats with a call for engagement between the parties being based on mutual respect in the interest of promoting a good working relationship and improving productivity for mutual benefit of the parties and not on the basis of threats.

26. The defence is also that Outsourcing is not in violation of the Collective Bargaining Agreement.

27. That on 14th May 2015 the Respondent served a notice/Statutory Notice of potential redundancies resulting from re-organisation on the claimant, the County Labour Officer (CLO) and all its employees informing all the relevant parties of possible redundancies as required by the provisions of section 40 (1) of the Employment Act and clause 11 of the Collective Bargaining Agreement and invited them for consultations. This first statutory notice was served upon the Claimant by the Respondent Legal officer at 9.05am at its offices which was duly acknowledged and after which the CLO was served and this was before all employees were served via a General email sent at 9.41am.

28. In November 2014, the Respondent conducted a comprehensive assessment of its operations and processes with a view of reducing its costs and increasing efficiency in its operations, the objective being to increase access to the communities it serves with better provision of quality health and related services.

The result of the assessment of operations and processes lead the Respondent to conclude that to achieve its core objectives it needed to re-design departmental processes to ensure operations are efficient; reorganise the structure; and realign staff to ensure quality patient care and effective decision-making. Due to the need to meet these objectives there was potential likelihood that some positions may be made redundant.

29. Based on the provisions of section 40(1) of the Employment Act and clause 11 of the Collective Bargaining Agreement, the Respondent issued a 2 months' notice of intended redundancy and indicated that no position or employee had been declared redundant. In the 2 months the Respondent was to engage the Claimant and the non-union members likely to be affected by any change. Between 14th and 15th May 2015, the Respondent held 3 meetings with its employees including the Claimant branch chairman, Secretary and shop steward and were briefed on the purpose, rationale and need for the proposed restructuring, the legal requirements, the areas likely to be affected by the possible redundancies and its potential impact on individual members of staff. The Respondent went out to ensure that all consultations were wide-ranging, interactive and convenient. There was strategically placed suggestion boxes, a dedicated email address to which individuals could send comments and schedule meeting for consultations. There was a web-site with all relevant information which allowed for interactive participation. These consultations involved the over 2000 employees of the Respondent of which 543 are Claimant members.

30. The Respondent has not commenced any redundancy process and/or made any of its employees redundant but is undertaking the consultation exercise required by law ahead of possible redundancy and has received positive feedback and suggestions from non-union staff members. The Respondent followed the v but the Claimant failed, ignored and refused the notice and invitation for consultations with the intention of stopping the process without any basis. The Claimant has also denied its members representation in the consultation process.

31. In defence, the Respondent further stated that on 10th June 2014, they withdrew the notice dated 14th May 2015 based on the Court ruling. Having withdrawn such notice a fresh notice was issued directly to the clamant, non-union employees and to the CLO. The claimant's efforts to stop this notice failed as on 16th July 2015 the Court dismissed the Claimant application. The challenge to the notice of 14th May 2015 is rendered futile.

32. On the orders sought, the Respondent submitted that prayer 1 has been granted when he Court declared the notice of 14th May 2015 as null and void on 4th June 2015 and 16th July 2015. The suit should therefore be dismissed as the rest of the claim is wrongly conceived. Costs should be awarded to the respondent.

33. In evidence, the Respondent called two witnesses, Judith Oduge-Otieno and Shawn Bolouki.

34. Mr Bolouki is the Respondent CEO and prior to taking up his duties as such he had widely served different hospitals in California USA and has over 25 years' experience of leadership in healthcare section in academic, not for-profit, faith-based, and investor-owned and government hospitals. Before he was appointed by the respondent, there was concern over the cost structure which had impacted on its mission in providing quality cost efficient medical services. In 2014, an assessment was undertaken of the Respondent hospital operations, processes and cost structures. This was followed by a review exercise of the assessment results as well as the steps that have or are being undertaken towards achieving the hospital's core goals.

35. Mr Bolouki testified that he joined the Respondent from October 2012 with a mandate to understand the operations. He sent out ten (10) question to human resource to help assess the organisation and this was shared with the members of the faculty and other stakeholders. He also met the chief officers of various insurance companies/organisations, senior manager, private physicians and corporate clients as he wanted to understand their expectations of the Respondent and the challenged they perceived to exist and what cost saving ideas they had for the Respondent. He started with an open door policy so that

everyone was free to approach him at his office. Any stakeholder who wanted to talk to the CEO was felt welcome to address any challenges faced at the Respondent. The one clear message that he got feedback on was that the Respondent structure was an impediment for clients to access services – from doctors, and other service providers.

36. The witness also testified that he did a SWOT analysis (strengths, weaknesses, opportunities and threats) to help him know what was going on and to be able to map the respondent's future and to understand what was going on within the Respondent business and at the various clinics.

37. There was a financial assessment. He met the finance team and together did an analysis from when the Respondent became a university and the changes that took place and it was clear that some areas had costs up and in it was noted that the future was not sustainable and there was need to address finances in this regard.

38. The mandate of the Respondent is to be the premier health care institution in Kenya and sub-Saharan Africa in medical and doctor training. He looked at this and following the stakeholder consultations it was decided that a complete assessment of the Respondent opportunities be undertaken. This was to assess the staff, contracts with doctors and service providers. Based on the productivity of each, it was decided that a staff model be adopted. In some departments there are services that are partly outsourced and partly staffed in-house creating incongruity in Human Resource operations. Housekeeping and maintenance – 58 staffs are outsourced while 101 are in-house; security has 145 staffs outsourced while 6 are in-house. Transport service is fully outsourced. Laundry service is partially outsourced. Productivity analysis and zero based budget process was initiated. Faculty production model was also initiated, with focus on departmental workload distribution. The new model is to increase productivity and accountability.

39. Mr Bolouki also testified that based on his past experience in the management of hospitals, he visited the various departments of the Respondent and realised that some technology and the staff there did not match. At the finance department, work was manual and insurance companies required hard copies. Where there were 10 employees and based on their productivity, with use of technology productivity would have improved. He also assessed the number of physicians needed and productivity per patient and he noted that the model that the Respondent used was not efficient. The witness held consultations so as to appreciate the model in place and propose some changes as proposed. He needed to show it to the various stakeholder. In the 1st meeting with employees in October 2014, he shared his mandate to reduce staff by 10%. He immediately realised that this was not a proper approach as he needed to start with an operational assessment to help make the necessary adjustment and open stakeholder consultations. He made saving upon saving with suppliers – productivity analysis model – with suppliers. From 2014 the Respondent trend on costs was that they were going up and revenues were going down. This was to help in the costs of training students which was going up and following this trend it was not going to be sustainable. For insurance companies to be sustainable there was need to review with a 4% increase as other peers in the same sector had increased services by 10%. The Kenya Shilling has dropped in value increasing costs and a changes were necessary as in this period the Respondent made Two million USA Dollar losses due to the poor shilling.

40. The contribution therefore made was to have the Respondent as an efficient organisation. In 2014 the Respondent held 3 medical camps and gave 1000 physicians and clients services and overall spent approximately Kshs.120 million; held training in 9 hospitals and a high cost of over 600 Million shillings in the 4 years of training residency students; the Respondent sponsored staff to go abroad for training so as to give back to the community once they are back. The Respondent hosted the Africa First Ladies and ensure there are over 100 physicians in communities as part of the Respondent mission and mandate.

41. In this case, the Claimant Secretary General visited him at around 4.30pm, he had another meeting at this hour. Mr Njeru said that he had come to the hospital to see a doctor and sought to have a meeting with the CEO but it was not possible to meet then. He was called the next day to help plan a meeting but Mr Njeru was not available. A follow up email was sent for a meeting on 24th July 2015 but on 27th July 2015 Mr Njeru replied and said that all communications should be through his advocates.

42. In cross-examination the witness testified that when he joined the Respondent he sent out a 10 questionnaire to gather information and as a survey tool. This was to help in making a decision as to what the Respondent should do to turn around its business as the Board was/is very sensitive to ensure the community has access to its facilities and its price be adjusted accordingly. The questionnaire sent out came back with information that the Respondent services were too high which was similar to what the board had been concerned about. There are however no board minutes or the questionnaire report or the resolution of the board on these issues.

43. The management also made an assessment of the Respondent but this report is confidential and not in court. This assessment was completed in 2014.

44. The witness also testified that he is aware that the Claimant had moved to Court to challenge the validity of the notice issued by the Respondent by submitting that the Respondent had not justified reasons to declare the redundancy. On 16th July 2015 the Court ruled on this matter and noted that the Respondent should not move with haste as the Claimant had the right to assert its rights. The Claimant had moved to Court to challenge the validity of the redundancy process.

45. Mr Bolouki also testified that in his assessment if redundancy was to follow to make Respondent profitable, a reduction of employee was necessary. Outsourcing was also a consideration and an option the Respondent could take. In this regard, the Respondent has done an assessment for cost efficiency and consultations have been completed with non-union members of staff and the Respondent is left to see the recommendations as to whether they are practical and at the end of it, the Respondent has to decide as to whether there will be termination. That the redundancy notice issued has a possible redundancy and the Respondent has identified opportunities for changes and where the ideas given by non-union employees are practical, then a decision to lay off employee will be done. Consultations have been held with various stakeholders and there is feedback that the Respondent should reduce its costs for services. These are issues that the Respondent must address otherwise costs will go up and these shall not be sustainable.

46. The witness also confirmed to the Court that the Respondent has the intention of declaring redundancy after looking at all the recommendations that they have received from all constituents/stakeholders.

47. The 2nd witness Ms Judith Oduge-Otieno testified she an Advocate of the High Court of Kenya and the Legal Officer of the Respondent. Her responsibilities are to advise the Respondent on legal matters affecting operations as well as on statutory compliance for the operations and management team to achieve overall institutional goals. In late 2014, the Respondent completed an organisational assessment of operations, processes and costs structures with the objective of increasing access to communities it serves. The result was that the Respondent needed to realign its departmental processes, reorganise its structure and staff. There was evidence that Respondent costs were too high with an unyielding return; some departments had services outsourced yet the Respondent still employed staff to provide them. It therefore became evident that restructuring might result in a loss of staff.

48. On 14th May 2015 the Respondent issued a 2 months' notice informing its employees of possible redundancy as a result of restructuring of its operations so as to increase efficiency. This notice was served upon the Claimant and the CLO. It was then sent to the employees. On 15th May 2015, the Court stopped the redundancy processes commenced by the Respondent vide notice dated 14th May 2015. Upon service of the Court orders and directions, the Respondent stopped all consultations on the redundancy. The Respondent challenged the application of these orders and also sought to know whether the Court had stopped consultations with all Respondent employees and on 4th June 2015 the Court held that the redundancy process and consultative meetings commenced by the notice dated 14th May 2015 should stop pending the hearing of the suit.

49. Ms Oduge-otieno also testified that by a notice dated 10th June 2015 the Respondent withdrew the first statutory notice as the Court ruling on 4th June 2015 was that all redundancy communications should go to the Claimant directly. A second statutory notice was issued on 10th June 2015 and served upon the

Claimant and the CLO. The Respondent intention was to ensure wide consultations, interactive and convenient.

50. On 17th June 2015 the Claimant moved the Court seeking for orders to desist from violating the orders of 4th June 2015 by issuing of notice on 10th June 2015 in redundancy. The Respondent stopped all process with regard to the notice of 10th June 2015 and on 17th July 2015 the Court declined to confirm these orders. The Respondent then proceeded to issue a new schedule of consultative meetings, the Claimant was invited and on 10th August 2015, Claimant officials presented some suggestions forwarded to the CEO an intimation that the Claimant branch officials were willing to engage but May have been under duress from the Claimant not to do so.

51. In cross-examination the witness testified that the assessment report undertaken by the Respondent is not in court. The 1st statutory notice was sent to the Claimant before all employees were served. As per the Court ruling on 4th June 2015, the union had not been served.

52. That the Claimant membership is 543 out of the over 2000 employees of the Respondent but there is Cause No.1150 of 2012 filed by the Claimant against the Respondent over union dues owing and the Court delivered judgment directing that the employees who have signed the check off forms should have their dues remitted to the Claimant. That the reason why a new notice was issued on 10th June 2015 was because of the Court ruling, after the ruling on 16th June 2015, the Claimant was invited for consultations. The earlier notice was withdrawn on 10th June 2015 and a second notice issued.

53. That the claim is that the Respondent did not give valid reasons for redundancy. Section 40 of the Employment Act does not give a time frame for the redundancy process but the Respondent felt that certain costs had to be cut which has been done especially with suppliers. The process envisaged under section 40 of the Act has not been completed. The Replying Affidavit dated 27th May 2015 was in reply to the application dated 15th May 2015 and the context was that a notice had been issued to all employees and a schedule of meetings done but the Court stopped that process. Section 40 of the Employment Act sets the processes precedent to a redundancy. By the Respondent had commenced an assessment of its processes so as to increase access to the communities. It was a comprehensive assessment but it was still ongoing as impute was still being sourced from the stakeholders. The Claimant did not participate despite invitation.

54. In re-examination, Ms Oduge-Otieno testified that by May 2015, the Respondent had not declared any redundancy and even to date, no such redundancy has been declared. They do not know as to whether jobs will be lost. No Claimant member has been terminated on account of filing the claim. The Collective Bargaining Agreement cannot be renegotiated as the Claimant has not shown any willingness to do so. Section 40 of the Employment Act does not use the term *redundancy process*.

Submissions

55. The Claimant submitted that the Respondent has not justified the reasons as to why they want to declare redundancies at their place of work. Such reasons must be justified, fair, legal and valid since redundancy is termination of an employee's service/employment. Mr Bolouki testified that an assessment had been carried out and it was found that the services of the Respondent were inaccessible to the community and that costs were escalating making it difficult for the community to access services. No evidence was produced in this regard for a comparison of existing costs and projections. That various contracts had been negotiated with suppliers but no such contracts were presented. All the materials suggested as having been a result of consultations, assessments and board decision and approvals were never submitted. That Ms Oduge-Otieno did not submit any material evidence for her assertions with regard to compliance with the Collective Bargaining Agreement and that the Claimant had been invited for consultations on the ongoing assessments.

56. While the matter was ongoing and despite Court orders of 4th June 2015, the Respondent issued a

notice on 10th June 2015 after withdrawing the earlier notice of 14th May 2015. The intention was to proceed with the redundancy the Court orders notwithstanding. Section 40(1) (a) of the Employment Act was not adhered to by the Respondent. It is not sufficient for the Respondent to claim that they were realigning their systems, there is need for prove that there were valid reasons for making such conclusions.

57. The Claimant relied on the following cases – **KUDHEIHA versus Mombasa Sports Club, Cause No.440 of 2013 (Mombasa); the Wrigley Company (EA) Limited versus The AG & Others, Petition No.22 of 2012; Joseph Tama Ndua & Others versus Jacaranda Hotels Mombasa Ltd t/a Jacaranda Indian Ocean Beach Resort, Cause No.271 of 2013 (Mombasa); Jane Khalechi versus Oxford University Pres E.A. Ltd, Cause No.924 of 2010.**

58. The Respondent on their part submitted that the claim as presented has been overtaken by events as the basis of the same was the notice dated 14th May 2015 which has since been withdrawn. The Claimant therefore lack substantive justification. The suit is premature as no redundancy has been declared and hence nothing to justify. The claim and orders set out lack merit as there is no illegal redundancy and the Collective Bargaining Agreement has not been violated as alleged by the claimant.

59. The Respondent reviewed its operations in late 2014 and established that its costs base was too high. A comprehensive assessment of all sectors was undertaken and the Respondent realised that in several areas considerable savings could be achieved and be passed on to the community. The Respondent also realised that they had a problem with the staff numbers with duplicated roles, an overly complicated and inefficient organisation which made services expensive and this raised an unfortunate spectre of possible redundancy to reduce the wage bill that was high. The Respondent issued a 2 months' notice to employees to engage in consultations for the purposes of identifying what steps could be taken to avoid potential redundancy or on how to ameliorate it. The Court stopped the application of this notice and further consultations on its basis.

60. On 10th June 2015 the Respondent withdrew the 1st statutory notice and a second one was issued. Such a notice was for potential redundancy. In the 2 months consultations, the Respondent received views and is reviewing them. Section 40 of the Employment Act contemplates *potential redundancy* and this is what the Respondent wanted from the Claimant to hold consultations and share information. Upon the second statutory notice, the Claimant refused to engage the Respondent in consultations. The Claimant dissuaded its members not to engage to their loss.

60. On the applicable law, section 40 of the Employment Act contemplate terminations based on redundancy and section 45 outlaw unfair termination. Clause 11 of the V set out the principles parties herein should follow in the event of redundancy. However, the employer has the right to declare a redundancy and the only condition is that it must be justified. In this case the only complaint was that the notice of 14th May 2015 was not valid, which notice has since been withdrawn. That under section 40 the employer should issue a General notice of contemplated redundancy. Such notice should be for consultations as to whether redundancy should be undertaken and if so to what extent and the criteria to apply.

61. The Respondent also submitted that these proceedings are premature as no redundancy has been declared and any justification can only arise once this has been done. Indeed an employer must justify a redundancy, which could be due to financial distress or due to reorganisation. Consultations facilitate an employer to arrive at what options exists and only then can the employer exercise the right to make the declaration of a redundancy. Substantive justification for a redundancy can only come at the end of consultations process when a decision has been taken as to whether a redundancy is necessary or not. In this case the Respondent genuinely believes that due to operational reasons there are grounds for a potential redundancy following an organisational assessment.

62. That the Respondent has no intention of declaring nurses redundant; there however exists genuine and valid reasons for considering declaring redundancies due to the need to reduce operational costs, increasing efficiency and productivity. The Claimant has however frustrated the process of consultations

and the Respondent should not be held liable. The Court should dismiss the claim with costs.

63. The Respondent relied on the following cases – **Kenya airways Limited versus Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR**; **Plotti versus The Acacia Company Limited [1959] E.A. 248**; **S. N. Shah versus C. M. Patel & Others [1961] EA 397**; **Madinga versus Petroleum Control Commission, IRC 176 of 2001 (Malawi)**; **BMD Knitting Mills (PTY) Limited versus South Africa Clothing and Textile Workers Union (SACTWU) 1998 (19) ILJ 1451 (LAC)**.

Determination

The issues that emerge for determination can be set out as follows;

Whether the intended redundancy is null and void

Whether the Respondent should be compelled to abide by the Collective Bargaining Agreement;

Whether the Respondent has justified the reasons as to why redundancy should be carried out

Whether the Respondent is interfering and meddling with the Claimant members

64. The parties herein have a Recognition agreement. Such an Agreement was entered into upon the satisfaction that the Claimant had attained a simple majority of membership amongst unionisable employees in their employment. This Recognition Agreement cannot be negated on the basis that the Respondent has over 2000 employees and the Claimant has 543 members therein only. To undo the Recognition Agreement would require an intricate set of arithmetic. This shall not be gone into here as this is not the substantive issue in issue, save that where such a Recognition Agreement exists, such as herein, parties are bound by its terms. This kind of Recognition is given more emphasis where parties have a Collective Bargaining Agreement that set out the terms and conditions of employment for unionised employees. Such terms and conditions are binding upon the parties. Both parties herein admit that there exists a Collective Bargaining Agreement dated 29th August 2014.

65. The relevance and importance of a Collective Bargaining Agreement cannot be overemphasised here. This is a contract that bind parties to it. With regard to redundancy and the relevance of what parties have set out in a Collective Bargaining Agreement, the Court of Appeal in the case of **Thomas De La Rue (K) Ltd versus David Opondo Omutelema [2013] eKLR**. The Court held that;

Although, in respect of unionisable employees section 40 (a) required at least one month's notice before the effective date of the redundancy, the Act allowed parties, in a collective agreement, to agree on more favourable terms and such terms apply and take precedence. In consequence thereof, Clause 25 (ii) of the Collective Agreement provided to a two months redundancy notice. [Emphasis added].

66. Parties are therefore allowed to agree on better terms and conditions of service in employment. The law sets the basic minimum. Parties are always encouraged to go beyond such basic minimums subject to mutual agreement. Such is the purpose of the Collective Bargaining Agreement herein. Clause 11 of the Collective Bargaining Agreement sets out the agreed upon terms with regard to redundancy. Such terms are mutual and bind the parties herein.

67. Redundancy has its statutory procedures. Such are set out in its definition and procedures under section 2 and 40 of the Employment Act respectively.

“redundancy” means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;

68. A redundancy must be initiated by the employer through abolition of an office, job or occupation

which may lead into the loss of employment. As such, to arrive at which office, job or occupation is to be abolished, the employer must undertake an assessment, hold consultations so as to arrive at the ultimate decision as to whether it should be abolition of office, job, occupation and loss of employment. This is not a one-day event. It takes steps hence the *process of redundancy*. And as held in **Aviation and Allied Workers Union versus Kenya Airways Limited, Cause No.1616 of 2012**;

... Positions and not employees, become redundant. When the position becomes redundant, the employee can be re-deployed, which means the employee is given another job, or the employee is retrenched, meaning the employee loses the job altogether.

69. Therefore, even where a redundancy is declared, it does not necessarily mean there shall be termination of employment. This could entail the re-organisation of the business, de-deployment, and changes in operations and in some cases termination of employees.

70. The facts of the case as set out above and the analysis of the evidence above, set out at length is a clear demonstration that as early as late 2004, the respondent had commenced operational assessments of their business with the aim of reorganisation and towards this, there were wide-level consultations with various stakeholders. Equally, the claimant did note these activities and as Mr Njeru testified, and being away that reorganisations may lead to termination of employment of some employees, he did send a letter of enquiry to the respondent. I take it by this time, the respondent CEO Mr Bolouki was still new on his job, but there was Ms Oduge-Otieno, the Legal Officer of the respondent, who is also an Advocate of the high Court of Kenya and was well aware of the import and implications of the parties' Collective Bargaining Agreement and the legal provisions of section 40 of the Employment Act. Even where the respondent CEO is a foreign national from the United States of America, the respondent enjoyed the services of an Advocate as its legal officer and thus cannot claim not to appreciate the veracity of the key documents regulating the relationship between the claimant and themselves.

71. On the first issue above set out, both parties agree that on 4th June 2015, the Court ruling addressed at length the issue of the notice issued on 14th May 2015. Such notice has since been declared null and void and the Court went further to direct that pending the hearing of the suit, such notice should not form the basis of further consultations. The Respondent has since withdrawn this notice, vide the notice dated 10th June 2015. However, this withdrawal was after the fact. This was after the Claimant had moved the court. Such notice as issued on 14th May 2015 was in violation of the agreed terms and conditions of the parties Collective Bargaining Agreement. Its withdrawal by the Respondent was not directed by the court. However there is a finding that such notice of 14th May 2015 was not in compliance with the Collective Bargaining Agreement or the provisions of the Employment Act. Such a finding cannot be negated by the withdrawal of such notice while the suit herein was pending as this notice should not have been issued in the first instance in its form. Respondent witness insistence that this notice was served upon the claimant, as set out by Ms Oduge-Otieno, the violations therein cannot be wished away. Despite the withdrawal, the notice lacked validity. Issuance of another notice is not the subject of the claim herein. Where violations of contractual obligations occur, violations of the nature that they affect legal rights, a party whose rights have so been violated has recourse before this court.

72. On the question as to whether the Respondent has justified the reason for redundancy, upon the finding that the notice initiating the *process* being invalid, procedurally, any other step taken by the Respondent is of no legal consequence. The Respondent cannot ride on a procedural illegality to justify subsequent actions with regard to the involvement of the Claimant or its members on the *intended redundancy*. To do so would be to miss on a critical step that the parties have clearly set out under clause 11 of the Collective Bargaining Agreement and as set out under section 40 of the Employment Act.

73. That said, it is important to state the following. The world over, under the Kenyan jurisprudence, it is settled law that the employer has the prerogative to declare a redundancy. As correctly stated by the Respondent in their submissions, the employer has the right to declare a redundancy and the only condition set is that it must be justified. In **Kenya Plantation & Agricultural Workers union versus James Finley (K) Limited [2013] eKLR**. The Court held that; An employer would be entitled to undertake

redundancy just like that employer would be entitled to undertake the other human resource functions like recruitment and selection, appointment and promotion, training and development and termination of the contract of service including dismissal on disciplinary grounds. The General principle was that the Court would not interfere in the employer's entitlement to undertake these functions and interference by the court, with respect to such functions, would be exercised very sparingly.

The court's rare intervention could be justified on account of obvious breach by the employer of the statutory or due process requirements or such other manifest injustice, and in circumstances whereby the employer was proceeding in a manner that made it impossible to deal with the breach through the employer's internal process.

A rare situation which justified the court's intervention, with the employer's discretion to issue redundancy notices, existed in the circumstances. The consultative process that would facilitate resolution of the disputed issues as per the prevailing procedures had collapsed and the reason for termination on account of redundancy was premised upon the respondent's misconceived and pretended closure of the hospital in contravention of the applicable statutory provisions. Therefore, the redundancy did not pass the validity test cited in section 43 of the Employment Act, 2007. [Emphasis added].

74. Such a prerogative exists to ensure the employer is able to undertake and make a sound business decision to improve on its business. But where the redundancy process is undertaken in breach of a fundamental provision of the law or agreed terms as under a Collective Bargaining Agreement, upon the Court invitation to address the same, the law must prevail even where an employer enjoy a prerogative to declare a redundancy. Equally where an employer declares a redundancy for the sake of it, so as to frustrate a particular employee, this is abuse of such prerogative and in breach of fair labour practice. As submitted by the claimant, in the case of **Jane Khalechi versus Oxford University Press EA Limited**, an employer shall not be allowed to simply cite re-organisation as a sufficient reason to lay off an employee, due process demands that consultations be inclusive and documented. Otherwise, there will be nothing to refer back to as to how the decision to lay off staff was arrived at.

75. In this case, it is apparent that the Respondent board, various stakeholders' particularly employees in various department realised the need for operational changes. Such changes arose from the work of the Respondent CEO who commenced an assessment of operations and as directly by his Board. There was feedback from the stakeholders that the Respondent should review its costs and this could only be done through reorganization of its operations. The evidence of Mr Njeru on what he perceives to be a redundancy is also clear and not further from the legal implication of it – he stated that this happens when an employer decides to remove some employees due to an economic need. This was also the essence of Mr Bolouki's evidence that;

... Following the assessment the Respondent sought to improve the overall institutional efficiencies to make services more affordable to the community. The main strategy to achieve this was a cost reduction strategies involving all sectors of the organisation...

76. To therefore dilly dally with the subject under the guise of *intended redundancy*, even where the Respondent board has made a decision, the Respondent CEO has seen the need for restructuring, the stakeholders have given feedback on costs reduction and the employees have given proposals as to the areas that can be addressed so as to reduce duplication of roles as noted by Mr Okumu for the claimant, the Respondent is simply refusing to state that the ship has taken sail and to stop it mid high seas is to leave it to sink! The various processes undertaken, the decisions made in late 2014 that the Respondent required to urgently address its operations due to continued losses was sufficient to commence the *redundancy process*. The Claimant Secretary General actually did set the ball rolling when he wrote to the Respondent to *confirm ongoing rumours*. The Respondent took the option to hold back. In February 2015, Mr Njeru nudged the Respondent once more, but again, the Respondent opted to hide under the charade that all was well.

77. The delays in involving the Claimant formally and as contemplated under the Collective Bargaining Agreement and under section 40 of the Employment Act will only hurt the Respondent

business. It will create more sour relations with the Claimant. Employees, unionised or not will have rumours rife and work productivity be at its lowest ebb. I will only say that much. Save that, consultations and negotiations is the fodder for peaceful labour relations. In situations where the Claimant and the respondents enjoy Recognition and a Collective Bargaining Agreement, only consultations can move the *process of redundancy* or *intended redundancy* forward. To quote the Justices of Court of Appeal verbatim in the case of **Kenya Airways limited versus Aviation and Allied Workers Union**, the three (3) judges were unanimous that;

*Unless the circumstances are such that it would be an utterly futile exercise to hold any meaningful negotiations, consultation has to be real and not cosmetic. The New Zealand Chief Judge succinctly expressed this point in the case of **Cammish v. Parliamentary Service**¹²: “**Consultation has to be a reality, not a charade. The party to be consulted must be told what is proposed and must be given sufficiently precise information to allow a reasonable opportunity to respond. A reasonable time in which to do so must be permitted. The person doing the consulting must keep an open mind and listen to suggestions, consider them properly, and then (and only then) decide what is to be done.**” [Emphasis supplied]*

78. The employer must invite the Claimant to negotiations and or consultations with an open mind as it were. The Claimant must also attend the same with an open mind too. The emphasis by the Respondent that on 14th May 2015 they sent out a two-month statutory notice is not one such idea of being open minded. What was the purpose of setting the notice as if it were cast on stone? Was this meant to follow the Collective Bargaining Agreement at clause 11 yet avoid the logical consequence of its implications? Was this meant to circumvent an issue that was apparent on the face of decisions already made? As rightly noted by the Court of Appeal above cited, consultations should not be a charade. I will add, consultations should not be a means to justify an end or an end in itself. It should entail a *process* towards achieving a goal. Consultation should be held so as to achieve industrial peace and ensure fair labour relations.

79. How this *process* commences is important. The employer is likely to get it right or totally miss it. Once there is a false start, this becomes an invitation for anxiety by the employees and such anxiety can only lead to low productivity and a loss for the very purpose for which the very good intention to restructure and reduce costs may have been intended to achieve. This is because, employees are not machines. They are human beings. One cannot put them on and then off suddenly. That would be wishful imagination. Once the seed of redundancy was planted, the rumours started milling around, a letter was sent from the Claimant – the Respondent should have taken the cue and invited the Claimant for consultations. To ignore the Claimant from the stand point that the Respondent had the prerogative to reorganise its business as deemed fit and necessary, was to encourage fertile imaginations, employees anxiety going up wondering and worried if their employment would be terminated and the final result being the notice of 14th May 2015 that culminated in the current suit. Such should not have been the case had the Respondent issued such notice appropriately or invited the Claimant for consultations as early as in December when notice of rumours was brought to their attention. To seat back with a good intention and fail to share when called upon, even when the Respondent CEO had intended to have the notice issued later, this is a practice not healthy for labour relations.

80. At Para 12(i) of the Respondent defence is self-defeating – on the one hand the Respondent asserts that the redundancy process had not commenced while on the other hand admits that they are undertaking consultations required in law ahead of possible redundancy.

The respondent has not commenced any redundancy process and/or made any of its employees redundant but is undertaking the consultation exercise required by law ahead of any possible redundancy and has received positive feedback and suggestions from non-union staff members. [Emphasis added].

81. These averments looked at vis-a-vis the next paragraph at 12(j) is self-implicating thus;

The respondent has followed the laid down processes under the Collective Bargaining Agreement and the Employment Act, 2007 for the intended redundancy.

82. As noted above, redundancy is a *process* – once notice is issued, consultations follow, identification of issues is done, if such require re-organisation of employees such is addressed; where such reorganisation may require certain position be removed, a criteria is set out and where possible terminations are inevitable they are identified, and based on the pre-set criteria, affected employees are served with termination notices and the guidelines for the issuance of such notice is set out in law. Therefore, the consultations leading to possible redundancies, whether the employees will lose their jobs or not, it cannot be separated or seen as a separate initiative outside the *redundancy process*. The resulting impact is that there will be a reorganisation as a result or there will be removal of certain positions which may result in some employees losing their jobs. Such intertwined are the *processes*. Sharing such a process with the Claimant is imperative. Once a decision and need to reorganise has been reached, the intention of redundancy has commenced. Such *intention* cannot be held back by the *two-month statutory notice* as issued by the Respondent. Such sharing can only hasten the process. This is the import of clause 11 of the Collective Bargaining Agreement. I also find that clause 11 of the Collective Bargaining Agreement is not far off from the requirements under the law in section 40(1) of the Employment Act.

83. The last issue is whether the Respondent is interfering with the Claimant members. I find no such evidence. What is clear however is that the Respondent has ignored the role of the Claimant in engaging with their employees vis-a-vis ensuring unionised members get proper representation through the union of their choice. The Recognition of the Claimant is a legal process. Equally the Collective Bargaining Agreement in force is a legal document. Such must be respected in industrial/labour relations.

84. The anxiety of the Claimant members should rest with the admission by the Respondent that they have not declared a redundancy. Once this is done, noting the orders herein stopping the operation of the notice subject of this suit on 14th May 2015 until this suit is concluded, due notice will be issued to the Claimant where necessary. Such notice shall be by the employer, the Respondent herein to the trade union, the Claimant herein. With the judgement herein, the Court cannot direct as to when the notice should issue if at all necessary.

Remedies

85. On the remedies sought, the breach of any legal contract and any violations to the law is addressed in an award of compensation or damages. The Claimant stopped at that point of proving the violation of the Collective Bargaining Agreement at clause 11 and section 40 of the Employment Act. There were no submissions as to what damage this has caused to the claim to enable the Court assess and direct as appropriate. This Court is however not powerless as section 12 grants power to the Court to direct as appropriate in any given case. Save for the declarations sought, the Claimant should be awarded their costs as had the Respondent moved as appropriate, this suit would have been avoided.

86. Concern must be made here on the Respondent conduct. While the suit remained alive, and noting the ruling of the Court on 4th June 2015, the notice subject of that ruling was withdrawn. A new notice was issued. Once the suit herein commenced, there was in motion a challenge to the legality of the Respondent action. To move outside of Court to frustrate the Claimant in that end is contrary to fair labour relations. The Court was available to direct and where necessary the Respondent had the right to seek any clarification, review or the setting aside of any orders that were deemed unclear or an error on the face of the record. Ultimately, the Respondent has an inherent right of appeal. to thus move outside the Court process with a view to defeat the orders made, with a view to frustrate the legal process set in motion by the claimant, these I find to be in bad faith and contrary to the just administration of disputes before this court. This Court exists for both employers and employees and indeed all parties engaged in employment and labour relations. Nothing stopped the Respondent pending the determination of the suit herein to move the Court as appropriate.

87. Once the Claimant filed their suit on 15th May 2015, where the Respondent felt and or found the need to re-issue the offending notice of 14th May 2015, it was not for the Claimant to amend their suit. It was the Respondent left to do a counter-action, withdrawn that notice and seek to issue a new one. For this reasons, any notices that followed once the Claimant obtained orders as set out herein on 4th June

2015, these were inconsequential. To allow such notices to take effect while the Claimant enjoyed lawful orders herein would be to help the Respondent circumvent the course of justice.

88. Before conclusion, I wish to single out the evidence of Mr Njeru for the Claimant and that of Mr Bolouki for the Respondent. They were both honest and stated the case as it is. These two gentlemen put together are clear as what ought to be done with regard to prevailing relationship between the parties herein. They each have a distinctive passion for their work and the constituency they represent. It was apparent as each gave evidence on different days in Court that they have a long wealth of information in their areas of work and such energy put together at the negotiations table will result in industrial peace between the parties.

Based on the above findings, noting the breach to the Collective Bargaining Agreement and the Employment Act I enter judgement for the Claimant in the following terms;

- a. **I declare the Notice issue by the Respondent and dated 14th May 2015 null and void;**
- b. **Such notice as (a) above was in breach of clause 11 of the Collective Bargaining Agreement between the parties and section 40 of the Employment Act;**
- c. **To avoid litigation in instalments, the notices issued after commencement of the suit herein are of no legal force;**
- d. **The Respondent shall meet the claimant's costs herein.**

Orders accordingly.

Delivered in open Court at Nairobi this 30th day of November 2015.

M. MBARU

JUDGE

In the presence of

Lilian Njenga: Court Assistant

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