

The Humble Petition of Kenya Union of Journalists is as follows:

A. PARTIES

1. the Petitioner is a duly registered Trade Union under the Labour Relations Act, 2007 whose objectives include to make every endeavor to obtain just and proper rates of wages, working hours and other conditions of employment, to negotiate and promote the settlement of disputes arising between employees and between employees by conciliation, arbitration or otherwise, and generally safeguard the interest of all members. Its address of service for the purposes of this suit shall be **C/o Oduor Ibrahim, Advocate Kenya Union of Journalists, Delemere Flats, Apartment C16 Jakaya Kikwete Road 47035-00100 NAIROBI. Email: oduor.ibrahim@gmail.com**
2. The Respondent is a limited liability company registered under the Companies Act, No. 17 of 2015 with business interests across the broadcast, print and online media platforms. Its registered address is C/o Mediamax Network Ltd, 3rd Floor, DSM Place, Kijabe Street, Nairobi. P. O. 103618-00101, Nairobi, Kenya. Safaricom: +254-709 824 100: Email: info [at] mediamax.co.ke
3. The Interested Parties are former employees of the Respondent, their contracts of service having been unfairly and unlawfully terminated on 21st June 2020.

CONSTITUTIONAL & LEGAL BASIS FOR THE PETITION.

4. Article 19 (1) and (2) states the basis for fundamental rights and freedoms enshrined in the Constitution and provide that they are an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. Sub-Article 2 states that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
5. Article 20 (1) provides that the Bill of Rights applies to all law and binds all state organs and all persons.
6. Article 20(2) provides that Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
7. Article 22 (1) empowers every person to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
8. Article 25(a) enlists freedom from torture and cruel, inhuman or degrading treatment or punishment as one of the fundamental rights and freedoms that cannot be limited.
9. Article 28 enshrines every person's inherent dignity and the right to have that dignity respected and protected.

10. Article 29 provides for the right of every person to freedom and security of the person, which includes the right not to be—
 - (d) subjected to torture in any manner, whether physical or psychological;
 - (f) *treated or punished in a cruel, inhuman or degrading manner.*
11. Article 36 (1) guarantees every persons freedom of association which includes the right to form, join or participate in the activities of an association of any kind.
12. Article 41(1) guarantees every persons the right to fair labour practices.
13. Article 41(2) (a) (b) and (c) provides that every worker has the right to fair remuneration; to reasonable working conditions and to form, join or participate in the activities and programmes of a trade union.
14. Article 41 (5) guarantees every trade union, employers' organization and employers the right to engage in collective bargaining.
15. Article 258 (1) and (2) (c) and (d) gives every person the right to institute Court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
16. Section 45 of the Employment Act prohibits unfair termination of employment. 45(2) provides that termination of employment by an employer is unfair if the employer fails to prove—
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.
17. Section 35(5) provides for payment of service pay equivalent to 15 days for every year worked where an employee is employed on a contract for service pay upon termination of their services .
18. Section 40 of the Employment Act provides for the redundancy procedure and requires inter alia that redundancy notice is issued to both the local labour office as well as to the employees or the representative labour union before any such termination is conducted. The section also provides for payment of severance pay at 15 days for every year served.
19. Section 54(1) of the Labour Relations Act, No.14 of 2007 provides that (1) An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

FACTS FORMING THE BASIS OF THE PETITION.

20. The Respondent is a media company with interests across different sectors including print, online and broadcast platforms. Its operations substantively rely on the professional input of journalists, in this case the Interested parties among others.
21. In pursuit of its business interests, the Respondent employed the interested Parties. The Interested Parties The Respondent was the employer of the interested parties, all of whom are journalists, within its editorial department.
22. The interested Parties rendered themselves diligently and professionally in the service of the Petitioner and helped the Petitioner to grow into a large media house, a task which often involved working long hours and meeting short and strict deadlines.
23. None of the Interested Parties has any known disciplinary record held by the Respondent against them.
24. On 21st June 2020, the Interested Parties received a text messages informing them that their positions had been affected by the redundancy and requesting them to report at for a discussion as to what that meant to their job positions.
25. In line with the instructions the Interested Parties proceeded for the meeting as requested whereupon arrival, they were ambushed with termination letters which read in part as follows:

“We write further to our notice of intention to declare redundant the positions within Mediamax Network Limited dated 21st May, 2020. We regret that as a result, your position has unfortunately been declared redundant... This will result in the termination of your employment on account of redundancy. This is effective 21st June, 2020....”
26. It is instructive to note that the Interested Parties had hitherto in fact never been issued with any redundancy notice, hence were serving the Respondent diligently in the false hope that
27. Alongside the Termination letters the Respondent issued the Claimants with a computation of their final dues, most of which did not take into account all the years served by the Petitioners at the
28. If any redundancy notice was issued to the labour office, it was general and of no help to the Interested parties.
29. It is therefore clear that the Respondent intentionally and willfully blindsided the Interested Parties in order to exploit their services without giving them an opportunity
30. It is also notable that at the time of termination, the Respondent had not paid the Interested Parties salaries for two months

31. The Petitioner is aware that as a result of the termination without notice and without the salaries, the interested Parties were plunged into untold suffering, difficulties and
32. Petitioners aver that they had never been notified that they would potentially be affected by the redundancy.
33. Further to the Interested Parties being unfairly terminated, purportedly on grounds of redundancy, it is notable that the computation of their purported severance package is less than what they are entitled to under the section 40 (1) (g) of the Employment Act.
34. That prior to the text, none of the Petitioners had received any communication that their positions would be affected.
35. Indeed the Petitioner is aware that on the same date the Interested Parties were terminated, the Respondent hired fresh staff to occupy the positions that were held by the Interested Parties.
36. The Actions of the Respondent are founded on a policy that aims at circumvent the provisions of Article 41 of the Constitution.
37. The termination of the Interested Parties came in the backdrop of attempts by the Petitioner to engage the Respondent in executing a recognition agreement, which attempts the Respondent refused and/or frustrated, evidently with the sole aim of perpetrating unlawful employment practices.

VIOLATION OF THE CONSTITUTION AND THE LAW

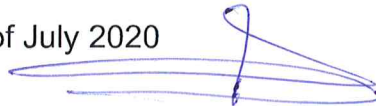
38. The Petitioner submits that the manner in which the Interested Parties were terminated was unfair, unlawful, unreasonable and in violation of Article 41(1) of the Constitution by deploying unfair labour practices.
39. The Respondents treatment of the Interested Parties violated Article 41(2) (a) and (b) of the Constitution.
40. The Respondent Acted in breach of Article 36(1) of the Constitution of Kenya 2010.
41. The Petitioner submits that the manner in which the Petitioners were terminated was cruel inhuman and degrading and as such a contravention of Article 29 (d) and (f)
42. The Petitioners submit that their termination on account of alleged redundancy violated Article 41 of the Constitution.
43. The Petitioner avers that the actions of the Respondent amounted to violation of the provisions of Article 28 of the Constitution non the Constitution.
44. The petitioner avers that the Respondent breached the provisions of Article 29 (d) and (f) of the Constitution.

45. The actions of the Petitioner violated the Right

REASONS WHEREFORE THE PETITIONER PRAYS FOR JUDGEMENT AGAINST THE RESPONDENT FOR ORDERS THAT

- a. A declaration that the termination of the Interested Parties from the Respondents Employment amounted to unfair and unlawful termination.
- b. A declaration that the Respondent acted in violation Articles 28, 29 (d) (f) and 41 (1) and (2) *a, b and c* in the process of terminating the Interested Parties.
- c. A declaration that Respondent acted in contravention of Articles 36(1), 41(5) of the Constitution in refusing to engage with the Petitioner towards execution of a recognition agreement.
- d. A declaration that the Interested Parties are entitled to compensation for unfair and unlawful termination.
- e. A declaration that the Interested parties are entitled to service pay under section 35 (5) of the Employment Act.
- f. An order requiring the Respondent to pay the Interested Parties compensation for 12 months on account of unlawful and unjustified termination.
- g. An order directing the Respondent to forthwith pay the Interested Parties outstanding salary arrears for the months of April, May and June, one-month salary in lieu of termination notice together with 15 days service under section 35 for every year of served.
- h. Interest in respect of the above sums at Court rates from the date of termination of the Interested Parties.
- i. Costs of this suit and interest thereon at court rates.

Dated at Nairobi this 28th day of July 2020



ODUOR IBRAHIM
ADVOCATE FOR THE PETITIONER

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