

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI
PETITION NO OF 2020

IN THE MATTER OF ARTICLE 19(1) and (2) OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 20(1) AND (2) OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 22(1) OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 25(a) OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 28 OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 29(d) AND (f) OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 36 (1) OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 41(1) (2) a, b & c AND (5) OF THE CONSTITUTION
AND
IN THE MATTER OF SECTIONS 40, 35(5), AND 45 OF THE EMPLOYMENT ACT
AND
IN THE MATTER OF SECTION 54 (1) OF THE LABOUR RELATIONS ACT, NO.14
OF 2007
AND IN THE MATTER OF UNFAIR, UNLAWFUL TERMINATION OF EMPLOYEES
OF MEDIAMAX NETWORK LIMITED.

KENYA UNION OF JOURNALISTS.....PETITIONER

VERSUS

MEDIAMAX NETWORK LIMITED.....RESPONDENT

KEN BOSIRE
JOAB MWAURA
CAROLINE MWANGI
CALEB RATEMO
ALBERT AMONYOLE
VICTOR OLOO
SHACKRI WACHA
DENNIS NYAMU
JAMES KARIUKI
NGETICH NEVOLLE
CHEROTICH TERER
ELIZABETH W.NJOROGE
CAROLINE NJENGA

..... INTERESTED PARTIES

AFFIDAVIT IN SUPPORT OF THE PETITION AND APPLICATION

I, **Eric Oduor** of P.O.Box No. 47035-00100 NAIROBI within the Republic of Kenya do hereby make oath and state as follows:

1. **THAT** I am the Secretary general of the Petitioner, I am well versed with the facts and circumstances giving rise to the instant suit. I am therefore competent to swear this affidavit.
2. **THAT** 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.
3. **THAT** the Petitioner brings the instant suit on behalf of the Interested Parties and the interests of the wider public who are consumers of the services of journalism.
4. **THAT** the Respondent is a media house with a wide ranging business interests across the online, print and broadcast media platforms within the Republic of Kenya. Up until 21st June 2020, it was the employer of the Interested Parties.
5. **THAT** in pursuit of its business interests, the Respondent engaged the Interested Parties on diverse dates, and retained their services up until 21st June 2020, when it unceremoniously, inhumanely and in barefaced breach of the Constitution and the Employment Act, terminated their Contracts of Service.
6. **THAT** I am aware that the work of the Interested Parties involved intensive and vigorous input and demanding high level of diligence and professionalism.
7. **THAT** 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.
8. **THAT** none of the Interested Parties have any known disciplinary record held by the Respondent against them.
9. **THAT** on 21st June 2020, the interested Parties received a text message 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.
10. **THAT** 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....”

11. **THAT** the Interested Parties had never been made aware of any redundancy notice affecting them, hence were serving the Respondent diligently. In fact on that fateful night, majority of them had just come from duty at the Respondents various stations across the country.
12. **THAT** if any redundancy notice was issued to the labour office, it was vague and not did not communicate to the Interested Parties the possibility of their positions getting affected.
13. **THAT** it is therefore evident that the Respondent willfully blindsided the Interested Parties with the sole intention of exploiting their services and thereafter terminating them under the guise of redundancy.
14. **THAT** such kind of mischief and treachery in labour relations is a breach of Article 41 of the Constitution and untenable in a free and democratic society.
15. **THAT** at the time of termination, the Respondent had not paid the Interested Parties salaries for the months of April and May. To date the said salary arrears and payment in lieu of notice remain unpaid, a situation that has subjected the Interested Parties, their dependents and families to untold difficulties misery and inconvenience, noting that some of them were serving loans and other debts owed to third parties.
16. **THAT** the actions of the Respondent terminating the Interested Parties so suddenly, without notice and without pay have plunged the interested parties into misery and untold suffering.
17. **THAT** up until the date of termination, the Interested Parties had never been notified that their positions would potentially be affected by any redundancy.
18. **THAT** without prejudice to the above averments, it is the Petitioners position that if any redundancy notice ever existed, the same was too vague and imprecise to constitute a proper notice, as shall be demonstrated by the Petitioner at the hearing hereof.
19. **THAT** it is a matter of public notoriety that on the same date the Interested Parties were terminated, the Respondent hired fresh staff to occupy the very positions that were held by the Interested Parties, thus completely debunking any claim that the terminations were occasioned by redundancy.
20. **THAT** I am also aware that some of the Interested Parties, by virtue of their positions were made to train some of the new employees who had just been recruited before their shocking unceremonious termination.
21. **THAT** Contrary to the provisions of section 40 of the Employment Act, the Respondent never shared or followed any criteria it would use in declaring redundancies. thus it is obvious that the intention of the Respondent intended

and did indeed execute termination of the Interested Parties on arbitrary, discriminate and unlawful premises.

22. **THAT** I have noted and it has further been reported to me that further to terminating the Interested Parties unfairly and clothing the same as redundancy, the Respondent willfully and deliberately failed to correctly compute the purported severance package in accordance with section 40(1) (g) of the Employment Act, to further deny them their rightful dues.
23. **THAT** in order to facilitate and achieve its inhumane, unlawful and unconstitutional objectives, the Respondent has over the years refused and frustrated the efforts of the Petitioner to execute a recognition agreement, in spite of the Petitioner trying to engage it on several occasions. ***(Annexed herewith and marked as EO1 is copy of the letter dated 19th September 2016, with regards to the request).***
24. **THAT** 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.
25. **THAT** the Respondent's treatment of the Interested Parties violated Article 41(2) (a) and (b) of the Constitution.
26. **THAT** the Petitioner submits that the manner in which the Petitioners were terminated breached their right to protection against torture, cruel, inhuman and degrading treatment as enshrined under Article 29 (d) and (f) of the Constitution.
27. **THAT** the Petitioners submit that their termination on account of alleged redundancy violated Article 41 (1) and (2) of the Constitution.
28. **THAT** the Petitioner avers that the actions of the Respondent amounted to violation of the provisions of Article 28 of the Constitution on the right to human dignity and to have that dignity respected and protected.
29. **THAT** the Petitioner avers that the Respondent breached the provisions of Article 29 (d) and (f) of the Constitution. [psychological torture and treatment in a cruel, inhuman or degrading manner.
30. **THAT** consequent upon the above enumerated violations, the Petitioner brings the instant suit under Article 22 (1) and (2) of the Constitution.
31. **THAT** this Honourable Court should be pleased to grant the prayers sought in the petition and Application in order to safeguard the Interests of Justice.
32. **THAT** I swear this affidavit in support of the Petition and the Application filed herewith.
33. **THAT** what is deponed herein is true to the best of my knowledge, belief and information.

Sworn at Nairobi this 28th day of July 2020]
by the said **ERIC ODUOR**]

Before Me



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] DEPONENT
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