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REDUNDANCY IN THE CONTEXT OF FIXED TERM EMPLOYMENTS

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The year 2020 has been very eventful; from the outbreak of COVID-19, to the lockdown measures introduced by the Federal and State Governments to curb the further spread of the virus. Few months after the lockdown was lifted, Nigeria slid into a recession in November 2020. Presently, Nigeria is facing what may well be the second wave of the COVID-19 pandemic, with fears of the country descending into a second lockdown. In all of these, the world of work is not exempted, with various employers grappling with the difficulties of reviving their businesses. Earlier in the year,



many employers took the tough decision of implementing pay-cuts as an alternative to mass lay-offs. However, with the current bleak state of the economy, there is a possibility that employers may be constrained to consider laying off part of their workforce to stay afloat. Some employers may be inclined (albeit erroneously) to declare a redundancy as a reason for laying off part of their workforce. This inadvertent misuse of the principle of redundancy has unfortunately resulted in a number of avoidable litigation and financial losses for employers. Thankfully, in the recent case of *Oladejo Elizabeth V. NTA-Star TV Network Ltd*,<sup>1</sup> the National Industrial Court elucidated the concept of redundancy, especially in the context of fixed term employments.

## FACTS

Ms. Oladejo Elizabeth (the “**claimant**”), occupied the position of a data analyst in NTA-Star TV Network Ltd (the “**defendant**”). The employment was for a fixed term of one year with a probationary period of six months. However, about six months in, the defendant declared the claimant’s position redundant, citing the harsh economic situation experienced in the country from 2016 till date, which affected the fortunes of the defendant, and which led the company to reorganize its manpower. Therefore, the defendant gave the claimant two days’ notice of termination of her employment. Sequel to her disengagement, the defendant reportedly paid the claimant’s redundancy entitlement in line with her contract of employment. Dissatisfied, the claimant instituted an action, challenging the purported redundancy, and sought the following reliefs:


- a. A declaration that the termination of the claimant’s employment, as a result of a purported declaration of redundancy, is irregular, null, void and of no effect whatsoever.
- b. A declaration that the claimant, being an employee of the defendant for a fixed period of one year in the first instance, is entitled to the remainder of her monthly salaries and allowances for the said period in the event of any termination of her contract.

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<sup>1</sup> Unreported Suit No. NICN/ABJ/259/2018, judgment delivered on December 17, 2020

## COURT DECISION

After a careful consideration of the submission of the parties, and the evidence before the Court, the following key issues were addressed:

- a. **Declaration of redundancy:** In the absence of actual proof, employers should be wary of the use of the words ‘reorganization’, ‘redundancy’ or ‘restructure’ as a reason for termination. Relying on the case of *Mr. Israel Anyanwu v. ADIC Insurance Limited*<sup>2</sup>, it was held that where an employer gives reorganization or restructure as the reason for termination, same must be justifiable. An employer cannot blindly use the word “reorganization” as a justification. It must be able to prove the need for the reorganization, its component parts and how the employer succeeded in implementing the reorganization in regards to the case at hand. In the instant case, the defendant’s notice of redundancy made reference to an ongoing workforce optimization across the organization, however, no evidence was provided to support this assertion. Additionally, even though the claimant’s position as a data analyst (a position integral to the defendant company) was declared redundant, the Court noted that there was another person occupying the position of a data analyst in the company. Thus, having failed to justify the redundancy, the Court took the view that the disengagement of the claimant was a simple termination, which was executed wrongfully.
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- b. **Termination without notice during a probationary period:** The position of the law is that the length of notice required for termination of contracts of employment depends on the intention of the parties as can be gleaned from their contract. In the absence of any express provision, the courts will always imply a term that the employment may be terminated by a reasonable notice (from either of the parties). Even where the employee is on probation and the employer confers on itself the power to terminate the contract in its absolute discretion, the law enjoins the employer to give reasonable notice to the employee. The foregoing in view, the Court rejected the provision in the claimant’s employment contract that allowed the defendant to terminate the employment without notice or payment in lieu of notice during probation, and held that the two days’ notice given by the defendant was certainly unreasonable. As such, the termination was further held to be wrongful on this point.
- c. **Wrongful termination of fixed term contracts:** The law is settled that where the contract of a fixed term employee is wrongfully terminated, one of the remedies available to the employee would be the payment of the full salary and allowances that the employee would have earned for the unexpired period of his or her tenure. Therefore, having found (in this case) that the claimant was employed for a fixed term, and given the wrongful termination of the claimant’s employment, the Court held that the claimant was entitled to her six months’ salary, representing the unexpired period of her fixed term contract.

## COMMENTS

Generally, redundancy means an involuntary and permanent loss of employment caused by an excess of man power, and usually results in a reduction in the workforce of an organisation. It is in essence, a unique mode of removing an employee from service wherein his post is declared redundant by his employer. It is instructive to note that the conditions applicable to redundancy are quite distinct from those applicable to retirement or other conventional modes of determining an employee from service, such as termination, resignation or dismissal. It is for this reason that the law

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<sup>2</sup> Unreported Suit No. NICN/LA/291/2013, the judgment of which was delivered on February 19, 2016

places a burden of proof on an employer who declares a redundancy to justify same. The mode of justifying such decisions are ordinarily not onerous. For instance, in *Tolulope Emmanuel Oyeyemi v Guardian Global Resources Ltd*<sup>3</sup>, the Court admitted the overdraft facility taken by the defendant and its audited account as evidence of the poor financial position of the company which informed its decision to implement salary reductions across board.

Furthermore, the conduct of an employer after declaring a redundancy contributes to the factors considered by the Court in determining whether indeed a post was declared redundant. In the instant case, the post of a data analyst was declared redundant, however, the defendant still retained another person to occupy the position of a data analyst. It was against this background that the Court adopted the decision in *Eme Ekanem Ukpong v. Akwa Ibom State Government & 2 ors*<sup>4</sup>, where it was stated that “*You cannot say you are reorganizing by retiring lawyers in one breath and then in the second breath say that more lawyers be employed to service the same system within which you are retiring others who have not reached retirement age or committed any wrongdoing.*” What this means is that it is often the role, and not necessarily the employee that is declared redundant. Consequently, an employer who declares a post redundant cannot, at the same time, be seen to engage another employee to occupy the same role.



Finally, an employee has no general right not to be declared redundant, however, the law demands that the conditions governing the redundancy must be complied with. These conditions are generally found in the employment contract or the collective agreement between the employer and its employees. To this end, it is pertinent for employers to ensure that the employee handbook and/or collective agreement adequately defines circumstances in which an employee's position may be declared redundant, as well as the redundancy benefits payable to the affected employees. More importantly, given the increasing demand for verifiable reasons for termination of employment, it is important to ensure that the method being adopted (redundancy, restructuring, reorganization, termination, dismissal etc.) is appropriate in the circumstance, justifiable, and aligns with the peculiar facts of each case.



**Lagos:** 1, Perchstone & Graeys Close, off Remi Olowude, Lekki Epe Expressway, Lagos; Tel: +234- 1-3429131, 7611051

**Abuja:** D3, Jima Plaza, 1627 Ahmadu Bello Way, Area 11, Garki Abuja; Tel: +234 92919191, 07045984792

**Benin City:** 40, Adesogbe Road, Benin City, Edo State; Tel: +234 7068518650, 07045984776

**Email:** [editor@perchstoneandgraeys.com](mailto:editor@perchstoneandgraeys.com); [counsel@perchstoneandgraeys.com](mailto:counsel@perchstoneandgraeys.com)

**Website:** [www.perchstoneandgraeys.com](http://www.perchstoneandgraeys.com)

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<sup>3</sup> Suit No. NICN/LA/372/2017

<sup>4</sup> Unreported Suit No. NICN/CA/87/2013