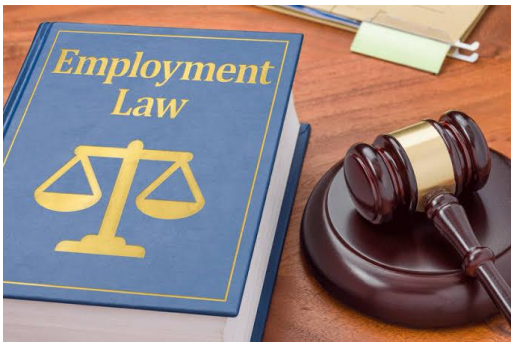
A Newsletter on Labour Law and Emerging Trends
- June 2021 Edition

Perchstone & Graeys
SOLICITORS, ADVOCATES & ARBITRATORS

DECLARATION OF REDUNDANCY: THE PROPER PROCEDURE



"*Is this how the company will repay me? After eight years of meritorious service to the company? After everything I have done for this company? I single-handedly built the company's reputation, and sacrificed everything for the company, and all I get is this ridiculous exit package...*" Mrs. Joke Gold (Joke) was heard fuming while leaving the Human Resource Manager's office.

In 2012, Joke was employed by Starglides Technologies Nigeria Limited ("Starglides") as a Public Relations Officer, and was responsible for managing the Starglides' reputation, and relationship with the media. However, as a result of the COVID-19 pandemic which severely disrupted Starglides' business, in June 2020, Starglides downsized and reduced its workforce by laying off 30% of its employees. As redundancy benefits, Starglides paid the affected employees prorated salaries for the amount of days they worked in that month, claiming that the employees' contracts made no provision for redundancy benefits

Starglides served letters of termination on all the affected employees. Upon receiving the letter of termination, Joke stormed to the Human Resource Manager's office in protest, stating that Starglides had acted in bad faith, without complying with the provisions of the law. All pleas to Starglides' management to reconsider its position went unheeded. Whilst other affected employees accepted the payments, Joke rejected same and decided to seek legal redress.

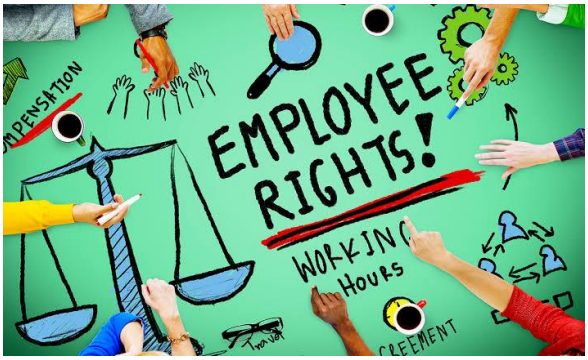
The National Industrial Court of Nigeria (NICN) per Hon. Justice F.I. Kola-Olalere, FCIArb, was opportune to consider a similar scenario that played out in the recent case of *Blessing Charles-Etim v. Marins Craighead & 2 Ors.,* (Suit No: NICN/YEN/248/2016), delivered on May 31, 2021, where the NIC considered the proper procedure for redundancy, particularly where the contract of employment and company's policies make no provisions for same.

Facts and Findings

Blessing Charles-Etim ("Blessing") was employed by BJ Services Company Nigeria Limited ("the company"). Sometime in 2015, the company conducted a redundancy exercise to reduce its workforce due to the downturn in its business. The redundancy exercise affected Blessing, and her employment was terminated vide a summary dismissal letter titled "Notification of Redundancy". Rather than negotiate redundancy payment with Blessing, the company paid one month's salary as her redundancy benefits. Blessing accepted the payment and subsequently sued for wrongful termination of employment on the ground that the company embarked on the redundancy exercise without following the procedure provided in section 20 of the Labour Act. In response, the company argued that the payment of one month's salary to Blessing was sufficient to satisfy her redundancy benefits, as the company exercised its right to terminate in lieu of notice, and neither Blessing's contract of employment nor the company's policies provide for redundancy benefits.

The Court found in Blessing's favour, holding that the provisions of the Labour Act on redundancy was applicable. Relying on section 20 of the Labour Act, the Court held that where an employee loses her job due to no fault of hers, but for the employer's economic reasons, the employer must inform the employee through her union or representative, of the reason for and the extent of the redundancy. The Court further held that the employer must also negotiate adequate payment for the redundancy with the employee's union or representative. Thus, the company, having failed to negotiate the redundancy benefits made Blessing entitled to compensation for unlawful termination of her employment.

Our comments:



The Nigerian labour law recognizes the employer's right to terminate the contract of employment on the ground of redundancy. Section 20(3) of the Labour Act defines redundancy as an involuntary and permanent loss of employment caused by an excess of manpower. However, this definition has been expanded by case law to include instances where the services of a worker, having been in the continuous employment of an employer, are no longer required by that employer due to no fault of the worker. *See Union of Shipping, Clearing and Forwarding Agencies Workers of Nigeria v. Management of Transaltic Nigeria Limited.*[1]

Redundancy is ordinarily governed by Section 20 of the Labour Act which provides as follows:

> "*(1)In the event of redundancy-*
> *(a) the employer shall inform the trade union or workers' representative concerned of the reasons for and the extent of the anticipated redundancy;*
> *(b) the principle of "last in, first out" shall be adopted in the discharge of the particular category of workers affected, subject to all factors of relative merit, including skill, ability and reliability; and*
> *(c) the employer shall use his best endeavours to negotiate redundancy payments to any discharged workers who are not protected by regulations made under subsection (2) of this section.*"

As simple as the provisions in section 20(1) of the Labour Act may seem, complexities may arise where an employee falls outside the contemplation of the Labour Act, and that employee's contract of employment, and other contractual documents such as the employee handbook, internal polices of the company, etc., are silent on redundancy. It is pertinent to state that the provisions in section 20(1) of the Labour Act do not apply to employees providing administrative, executive, technical, or professional functions to employers. The question that then begs for an answer is: What procedure would regulate redundancy for employees outside the contemplation of the Labour Act? *Blessing's* case rightly answers this question.

In the instant case, it was argued on behalf of the company that the procedure laid down in the Labour Act on redundancy did not apply to the termination of Blessing's employment, as same was not provided in her contract of employment. The Court rejected this argument on the basis that since parties agreed that their contract would be governed by and construed in accordance with Nigerian laws then section 20 of the Labour Act would apply. The Court further held that international best practices and fair labour practices demand that the redundancy exercise must be done in compliance with national law and practice. **Article 14 of the ILO Convention on Termination of Employment 1982 (No. 158)** specifically provides thus: "*When the employer contemplates termination for reasons of an economic, technological, structural, or similar nature, he shall notify, in accordance with national law and practice, the competent authority*

[1] (1988) Unreported Suit No. NIC/14/87, available online at: https://nicn.gov.ng/view-judgment/184

thereof as early as possible, giving relevant information including a written statement of the reasons for the termination, the number, and categories of workers likely to be affected and the period over which the termination are intended to be carried out."

The proper procedure:

Where an employer intends to embark on a redundancy exercise, the proper procedure to be followed are as stated below:

Employees contemplated under the Labour Act: This covers workers that are employed for manual labour or clerical work. The procedures laid down in section 20 of the Labour Act and the terms of their respective contract of employment must be strictly adhered to. It should also be noted that where the provisions of the contracts of service are inconsistent with the Labour Act, or its relevant provisions, the Labour Act will prevail, as the provision of the Labour Act supercedes the contract of employment.

Employees not contemplated under the Labour Act: These are employees that provide administrative, executive, technical, or professional functions. The redundancy procedure will be regulated by the employees' respective contracts of employment and other contractual documents including the employee handbook and the company's internal policies. But where the contract of employment and other contractual documents make no provision for redundancy, the procedures laid down in S.20 of the Labour Act should serve as an instructive guide. In the instant, we recommend that the employer:

(a) Inform the affected employee of the redundancy, or where the employee is unionized or has a representative, inform that union or representative;
(b) Discuss the redundancy benefits with the affected employee/union/representative;
(c) Negotiate a severance package;
(d) Issue a notice of termination of employment on the ground of redundancy, and
(e) Pay all benefits contemporaneously with the termination.

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