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We thought it would be useful to begin by defining Redundancy. This occurs where an employer-employee relationship is terminated through no fault of the employee but rather the employee's services are no longer required as they have become superfluous. A redundancy can occur either through abolition of office or occupation, reorganisation, retrenchment or restructuring.

The Courts have over the last 5 years continued to elucidate and develop the law and the procedures that apply to the redundancy process. This clarity is welcomed especially given the significant redundancies carried out in the last 2 years by several local & multinational companies and banks.

The Court of Appeal in the case of **Aga Khan University Hospital Nairobi v Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers (KUDHEIHA)** (hereinafter "**the Aga Khan Hospital Appeal**") recently reaffirmed the principle that organisations have the mandate and freedom to conduct their businesses according to their own business plan and should not be stopped from restructuring, especially if the organisation has followed the procedures provided for within the law. This is a welcomed clarification since previous decisions from the employment Court decisions had seen the Court analyse the employer's business and make an analysis of whether the redundancy was necessary therefore negating the employer's managerial prerogative in managing its affairs.

It is therefore important that employers familiarise themselves with the mandatory legal redundancy procedures when restructuring their businesses. Failure by an employer to follow the legal process in an intended redundancy could result in employees obtaining injunctive orders from the Employment and Labour Relations Court halting the entire redundancy process. Such an order could have detrimental effects on the business particularly if the redundancy was for instance, being carried out as a condition precedent to a merger transaction or where the purpose was to reduce the company's costs. In addition, the court can grant monetary compensation to the employees and/or reinstatement where the process was not adhered to.

In summary, the first important step is for the employer to issue to the employees' and their union (if applicable) the relevant statutory notification of the intended or proposed redundancy. This notice should also be sent to the area Labour Officer. The notice should state the reasons for and the extent of the proposed redundancy.

After the initial notice is sent, the employer is required to carry out consultations with the employee or the union (where applicable). The purpose of the consultations is to enable the employees to understand the reason(s) for the proposed redundancy and to give them an opportunity to raise concerns which the employer ought to address. The employer should also explain the proposed severance dues, as well as whether there are any alternative positions within the organisation. From a practical perspective the redundancy process takes a minimum of 2 months.

If you require any further information or clarification on the contents of this note, please contact:

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