



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 279 OF 2003

LAWRENCE NDUTU & 6,000 OTHERS.....PLAINTIFFS

VERSUS

KENYA BREWERIES LIMITED..... DEFENDANT

RULING

1. On 24th January 2018 this court rendered its judgement in which it *inter alia* directed the defendant to pay each of the plaintiffs damages for loss of employment, a sum equivalent to a month's salary at the time of their termination.

2. The plaintiffs were also directed to file schedules showing the amount each plaintiff earned per month as at the time of termination of employment.

3. The plaintiffs filed and served the defendant with their schedules.

The defendant too on its part filed counter schedules in response to the schedules filed by the plaintiffs. Learned counsels from both sides were invited to file written submissions and to make oral highlights.

4. I have carefully considered the schedules filed by both sides together with the rival written and oral submissions.

The plaintiffs are of the submission that they have provided relevant schedules which comply with the court directive which indicate the last monthly salary earned before their contracts of employment were terminated.

5. The defendant is of the submission that the early retirement scheme took into account payment of four months' salary in lieu of notice and therefore the plaintiffs are not entitled to another payment of one month's salary in lieu of notice.

6. The defendant further pointed out that some the plaintiffs should not be paid because they were terminated outside the period between 1997 and 2001.

7. Having considered the competing arguments, it is now clear that the period identified in the judgement as the period the plaintiffs' contract was breached was between 1997 and 2001.

8. I agree with the submissions of the defendant that those plaintiffs who are entitled to lay a claim are those whose contracts were terminated according to the disputed Early Retirement Scheme between the year 1997 and 2001. Consequently, those plaintiffs whose contracts were terminated outside the aforesaid period are not entitled to claim damages in lieu of notice.

9. The second issue which arose is whether the plaintiffs should be paid one month's salary in lieu of notice yet they have already been paid. It should be noted this court made its decision having that issue in mind. This court was alive of the fact that the plaintiffs were paid four (4) months' salary in lieu of notice as per the defendant's Early Retirement Scheme. The aforesaid scheme was declared to be unlawful.

10. The plaintiffs' employment was unlawfully determined and therefore the plaintiffs are entitled to claim damages equivalent to one month's salary in lieu of notice for unlawful termination of employment.

11. The clause providing for payment of four (4) months' salary in lieu of notice was part of the early retirement scheme which was impugned by this court. In short the plaintiffs are each entitled to be paid the equivalent of a month's salary in lieu of notice in terms of the contract of employment they had with the defendant which was breached.

12. The third issue which also came up for argument is whether or not some plaintiffs have already been paid using other suits. The

defendant pointed out that David Mwangi, Geoffrey Mwangi and George Mwathi filed similar suits against the defendant. The aforesaid plaintiffs contended that the defendant failed to provide evidence of the existence of those suits filed by the aforementioned trio. With respect, I agree with the plaintiffs that the defendant failed to provide credible evidence to prove the pendency of similar suits. Therefore the aforementioned plaintiffs are entitled to make the claim.

13. In the end, I issue an order directing the defendant to pay those plaintiffs whose contracts of employment were terminated between the period 1997 and 2001 according to the schedules provided by the plaintiffs falling within the aforesaid period.

Dated, Signed and Delivered in open court this 26th day of February, 2019.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant