



Timothy & 10 others v English Press Limited (Cause 227, 228, 230, 231, 247, 248, 249, 250, 251, 305 & 306 of 2014 (Consolidated)) [2024] KEELRC 2164 (KLR) (28 August 2024) (Judgment)

Neutral citation: [2024] KEELRC 2164 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 227, 228, 230, 231, 247, 248, 249, 250, 251, 305 & 306 OF 2014 (CONSOLIDATED)

J RIKA, J

AUGUST 28, 2024

BETWEEN

- DAVID NYENZE TIMOTHY 1ST CLAIMANT**
- PATRICK MUMO 2ND CLAIMANT**
- ELIJAH MWANGI MBAA 3RD CLAIMANT**
- SIMON NGUTA 4TH CLAIMANT**
- JACKSON KELI MUTHIANI 5TH CLAIMANT**
- MAURICE ITAMBO MATIVO 6TH CLAIMANT**
- MUNYOKI SAVALI 7TH CLAIMANT**
- DANIEL OBUYA OMEME 8TH CLAIMANT**
- OSCAR LITU 9TH CLAIMANT**
- ENOCK OCHURU ONTIERI 10TH CLAIMANT**
- ALEX MATAKORE OBIERO 11TH CLAIMANT**

AND

ENGLISH PRESS LIMITED RESPONDENT

JUDGMENT

1. The Claimants filed their Statements of Claim on various dates, in the year 2014. The Claims are against their common, former Employer.
2. There were orders for consolidation of the Claims issued on various dates, with Cause No. 227 of 2014, being designated, the reference file.



3. The Claimants aver that they were employed by the Respondent, as General Workers. They reported for duty on 7th October 2013. They discharged their normal daily duties. During lunch break, they went to the Management Office, to enquire about their September 2013 salaries, which had not been paid.
4. They were met by the Respondent's Production Manager Kalpesh, and the CEO Kalpan Patel, who verbally and physically accosted them. Without any explanation, the CEO summarily dismissed the Claimants.
5. They aver that they were coerced to sign exit letters. The Respondent dismissed them, and refused to pay their terminal dues.
6. They pray the Court to find that, termination was unfair and unlawful, and order the Respondent to pay to them: -
 - a. Rest days.
 - b. Public holidays.
 - c. Annual leave.
 - d. Notice.
 - e. Severance.
 - f. Salary for days worked to the date of termination.
 - g. 12 months' salary in compensation for unfair termination.
 - h. Costs.
 - i. Interest.
 - j. Certificates of Service to issue.
7. The Respondent filed a Statement of Response common to all Claims. Its position is that the Claimants were on fixed-term contracts. They worked as General Workers. They were involved in an illegal strike, on 7th October 2013. They absented themselves for duty in the afternoon shift. Their grievance was that their September 2013 salaries, had been delayed by about 3 days.
8. They used to receive their salaries by the 6th day of each month. They had been advised that 6th October 2013 was a Sunday, and they would therefore receive their salaries, on Monday, 7th October 2013.
9. The Management met the Employees on 7th October 2013, and advised that in the future, they should follow the correct grievance handling procedure, in making their demands. They were required to apologize in writing, and resume work. 200 out of 214 Employees involved in the unprotected strike, apologized and resumed work. The Claimants were among the 14 who declined, and opted to resign. They asked to be paid their terminal dues, which were paid.
10. The Respondent urges the Court to dismiss the Claims with costs.
11. The Claimants gave evidence on various dates in 2013, and closed their respective cases, on 7th February 2024. The Respondent's Head of Human Resource, Rachael Karugu, gave evidence on 15th March 2024. The Claim was last mentioned on 26th June 2024, when Parties confirmed filing and exchange of their Closing Submissions.



12. The Claimants adopted the contents of their witness statements, and their documents on record, in their evidence-in-chief.
13. Cross-examined, they told the Court that their salaries for September 2013 were delayed. They asked for an explanation from Management. There were over 100 Employees involved. They were told to continue working, and would be paid their salaries, by 8th October 2013. They were issued paper, and told to write an apology. They declined to sign apologies. They denied that they went on strike. None of them was a member of the Union. They agreed that they did not go back to work after lunch. Their pay slips show overtime and other dues paid. They were not aware how overtime was tabulated.
14. Rachael Karugu relied on her witness statement and documents filed by the Respondent, in her evidence-in-chief. She stated on cross-examination that the Claimants were involved in an unprotected strike. 200 Employees apologized and returned to work. 14, including the Claimants herein, declined apology, and asked to be released. They were released and paid their respective terminal dues. Their signatures on the letters of resignation, were genuine, and matched those on their letters of contract. It was not wrong for them to enquire about delay in payment of their salaries; it was wrong to engage in an unprotected strike to demand for their salaries. They refused to return to work, even after they were instructed to do so, by the Respondent.
15. The issues are whether the Claimants' contracts were terminated unfairly and unlawfully by the Respondent; and whether they are entitled to the prayers sought.

The Court Finds: -

16. The Claimants were employed on diverse dates by the Respondent, as General Workers.
17. The Respondent is a printer, and the Claimants performed various print-related tasks, such as binding of books.
18. There was a slight delay in payment of their September 2013. They used to receive their salaries by the 6th day of each succeeding month.
19. On this occasion their salaries had not been received by the 6th October 2013, which was a Sunday.
20. They downed their tools, on 7th October 2013. They had been advised that their salaries would available by 8th October 2013. They refused to work after lunch, and did not return to work, when advised to do so, by the Respondent.
21. Their evidence, that they were physically and verbally accosted by the CEO and the Production Manager, is diversionary. They engaged in an unprotected strike, and even when they were reassured that their salaries would be available by 8th October 2013, declined to resume work.
22. 214 Employees were involved in the unprotected strike. They were required to write letters of apology, and resume working, at the end of the strike. 200 of them complied, apologized and returned to work with no adverse action taken by the Respondent.
23. The 14 Claimants expressed their wish to cease working. There are written expressions of their wishes on record. They were intransigent and refused to apologize for their unnecessary and disruptive industrial action, unlike their 200 colleagues who apologized and continued working.
24. They left employment and were paid what was due to them.
25. The Court does not find merit in their respective claims, except on their prayers for issuance of Certificates of Service.



It is ordered: -

- a. The consolidated claims are declined except for the prayer on certificate of service.
- b. The Respondent to issue each Claimant with a certificate of service.
- c. A copy of the Judgment to be placed in each of the files.
- d. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 28TH DAY OF AUGUST 2024.

James Rika

Judge

