



REPUBLIC OF KENYA



**Kuria & 13 others v Kartasi Industry Limited (Cause E531 of 2022)
[2024] KEELRC 13488 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13488 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E531 OF 2022
B ONGAYA, J
DECEMBER 19, 2024**

BETWEEN

- JOHN MUTHANDI KURIA 1ST CLAIMANT
THOMAS MUTWIWA MUSYOKA 2ND CLAIMANT
KYALO MUNYAO 3RD CLAIMANT
JOHN GITONGA GITHAE 4TH CLAIMANT
ANDREW AMUNZE INYANGALA 5TH CLAIMANT
MOCHACHE OMBOGA DENILSON 6TH CLAIMANT
DAVID KARIUKI WANJIRU 7TH CLAIMANT
MILDRED NYANJE OJWANG 8TH CLAIMANT
COSMAS WAMBUA KATUMA 9TH CLAIMANT
IRENE NDUNGE KATUA 10TH CLAIMANT
DANIEL KINYUA KIGANO 11TH CLAIMANT
MAXIM NYAMAI MUTUA 12TH CLAIMANT
NELIUS WAIRIMU KIMANI 13TH CLAIMANT
FREDRICK MARK MACHINI 14TH CLAIMANT**

AND

KARTASI INDUSTRY LIMITED RESPONDENT



JUDGMENT

1. The claimant filed the amended memorandum of claim dated 08.05.2023 through Owino Bukachi & Company Advocates. He prayed for judgment against the respondent for:
 - a. An order prohibiting the respondent from selling its assets to a third party.
 - b. An order for reinstatement.
 - c. A declaration that the termination of the claimants by the respondent was unfair, unprocedural and unlawful.
 - d. A declaration that the respondent underpaid the claimants.
 - e. An order that the respondent does forthwith:-
 - a. Issue the claimants with a certificate of service as required by the law.
 - b. Special damages calculated at Kshs. 9,611,854.03.
 - c. General damages.
 - d. Exemplary damages.
 - e. Interests at court rate.
 - f. Costs of the suit.
 - g. Any other relief the Honourable Court may deem fit to grant.
2. The claimants' case was as follows:
 - a. The claimants were employees of the respondent at various times holding different positions as drivers, general workers, cooks, junior clerks, and printing machine operators.
 - b. The respondent and KAPRIPUPA (hereinafter "the union") signed a Collective Bargaining Agreement (CBA) of 2019-2020 that provided for terms of their employment.
 - c. They served the respondent under one-year renewal contracts without receiving any warning letters. However, in January 2020, the respondent forced them to sign a six-months contract that the respondent terminated three (3) months earlier before its expiry.
 - d. In early March 2020, at the end of their shift, the respondent's HR called each of them to her office separately at different times and advised them to go on leave. Some of them were forced to sign a leave form and went home with the hope that the respondent would take them back at the expiry of the leave term. Thereafter at the end of March 2020, they made several calls to the HR requesting to be taken back but their calls were ignored.
 - e. On 29.04.2020, the respondent called or sent a text message to some of them stating that salaries for the month would be delayed due to unavoidable circumstances, and that they should keep safe at home. The respondent called or sent another text to some of the claimants on 30.04.2020 stating that Covid-19 pandemic had slowed its business and they were not to resume work until they got communication from the respondent.



- f. Sometime in May 2020, the respondent created a group known as ILUVKARTASI and added all its employees except the claimants on leave, who were therefore never updated or informed of the measures it had taken to solve their problem. The respondent sent to the said group a text message on 06.05.2020 stating it had held three (3) inconclusive meetings with the union to deliberate on how to effect salary pay-cuts and that it would keep everybody informed.
- g. The respondent sent another text message on 13.05.2020 stating it was unable to make salary payments due to a financial crisis and that the union was to revert after getting directions from Kenya Association of Manufacturers (KAM). In the said message, the respondent stated it would be enforcing salary pay-cuts against the claimants' gross salary at 25% and in effect, neither waited for the union to revert nor was there an agreement to implement such measures.
- h. On 20.05.2020, the respondent informed some of the claimants by a text message that it would not renew their contracts of service due to decline in its business. The said notice of termination was neither intended for the claimants nor was sufficient as per clause 15(a) of the 2019-2021 CBA, which provides for two (2) calendar months' notice or payment of two (2) months' salary in lieu.
- i. On 28.05.2020, the respondent communicated via a text message to some of the employees sent home on leave to report to the HR for purposes of signing a new contract by 02.06.2020. This was discriminatory against the claimants as they were not called to report to work and were still on forced leave.
- j. On 29.05.2020, the respondent, via the ILUVKARTASI group, sent a text message to its employees still in service asserting it had had an inconclusive meeting with the union on 18.05.2020. It stated that it would go on to close the May 2020 payroll by enforcing the 25% pay-cut on salaries, contrary to the rules and procedures of redundancy stipulated in law. On 03.06.2020, the respondent went ahead to enforce the said salary pay-cut on all employees including the claimants, without informing and updating them on the progress of the meeting with the union.
- k. Sometime in June 2020, the respondent via the ILUVKARTASI group, sent a text message to those in active service informing them that a meeting held on 10.06.2020 with the union was conclusive and they had agreed to implement the salary pay-cut at 25%. This was clear indication that the respondent had proceeded to deduct their salary in May 2020 without reaching an agreement with the union.
- l. On 11.01.2021, the union wrote to the respondent demanding that it recalls them back and pay their dues in full but it neglected and refused to comply. The claimants also wrote a message via WhatsApp to the respondent on 30.07.2021 demanding payment of their dues but it again failed and ignored the message.
- m. The respondent then terminated the claimants' services without consultation, notice and explanation and contrary to the provisions of the 2019-2020 CBA on notice pay, issuance of a written termination letter, redundancy, severance pay, and salary increment of 8% in both 2019 and 2020. Further, they have never cleared with the respondent and/or returned their uniforms and tools of trade. The same constitute the claims in the instant suit.
- n. On 10.05.2022, the claimants came across a notice issued by the respondent stating that it is redundant and it had decided to exit the industry by selling all of its movable assets to an external party. When they sought the union's advice on the issue, they were informed that the union was still trying to strike a deal with the respondent but the union never reverted.



effluxion of time. Accordingly, they are not entitled to the redundancy payments as alleged and per the CBA. The claims will collapse.

8. Third, the evidence was that the union, which represented the claimants and by an agreement with the respondent on 10.06.2020, agreed to salary cuts for the claimants' salaries for May 2020. The claim that the pay cuts were unjustified or not consented to will fail. The claimants' witness (CW) John Githae Gitonga testified confirming that all claimants were members of the union and the union represented the claimants in event of grievances or disputes with the respondent. He also confirmed that the union negotiated the pay cuts in view of the COVID-19 situation and the agreed salary was paid. He also testified that with the pay cuts, they equally did not work on full time basis but upon prepared schedules. He also confirmed that the claimants worked on renewable contracts and his had been renewed over 16 years.
9. The claimants are entitled to a certificate of service per section 51(1) of the [Employment Act](#), 2007. Looking at margins of success each party to bear own costs of the suit.

In conclusion the suit is determined with orders the respondent to deliver claimants' respective certificates of service by 01.02.2025 and each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19TH DECEMBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

