



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngugi & 91 others v Kangema Farmlands Company Ltd & another (Cause E049 of 2021) [2023] KEELRC 334 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 334 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI**  
**CAUSE E049 OF 2021**  
**ON MAKAU, J**  
**FEBRUARY 9, 2023**

**BETWEEN**

**AGNES NGINA NGUGI & 91 OTHERS ..... CLAIMANT**

**AND**

**KANGEMA FARMLANDS COMPANY LTD ..... 1<sup>ST</sup> RESPONDENT**

**TROPICAL FARM MANAGEMENT KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. All the 92 claimants herein were employees of the respondents serving in different capacities, to wit general workers, drivers, security guards and supervisors. They served from diverse dates between the year 1974 and 2020 when their employment was terminated on account of redundancy. In 2015 their trade union (Kenya Plantation and Agricultural Workers Union) and the respondent concluded a Collective Bargaining Agreement (CBA) for the period between January 1, 2015 and December 31, 2016 which revised the claimants' salary upward. Another CBA was concluded in 2017 for the period January 1, 2017 to December 31, 2018 which further increased the claimants' salaries.
2. The claimants aver that the respondents never effected the said salary increments but continued to pay them the same salary they were earning in 2014. The said salaries were allegedly also used to calculate the terminal benefits upon redundancy. Therefore they have brought this suit seeking the following reliefs:-
  - i. A declaration that the respondent either underpaid and/or failed to pay the claimants in respect of severance pay, payment *in lieu* of termination notice, baggage allowance and salary arrears for the years 2015 to 2020.
  - ii. Severance pay (particularized in the tabulation filed herewith) Kshs 12,582,496.40
  - iii. Pay *in lieu* of notice (particularized in the tabulation filed herewith) – Kshs 3,550,853.00



- iv. Baggage allowance (particularized in the tabulation filed herewith) –Kshs 552,000.00
  - v. Salary arrears 2015-2020(particularized in the tabulation filed herewith) Kshs 16,030,840.00  
Total amount (particularized in the tabulation filed herewith) –Kshs 32,716,189.19  
Less amount paid (particularized in the tabulation filed herewith) Kshs 6,358,863.00  
Outstanding amount (particularized in the tabulation filed herewith) – Kshs 25,108,999.36
  - vi. Damages for unfair labour practice.
  - vii. Costs of this cause.
  - viii. Interest at court rates from date of filing claim until payment in full.
  - ix. Certificates of service.
  - x. Any other relied this honourable court may deem fit and just to grant.
3. The 1<sup>st</sup> respondent denies knowledge of some of the claimants and avers that it had had engaged the 2<sup>nd</sup> respondent under an estate management agreement. It avers that on December 6, 2019 its shareholders passed a resolution to subdivide and distribute the company land among the shareholders. It further avers that claimants were laid off and they were duly paid all their final dues.
  4. The 2<sup>nd</sup> respondent admits that it was engaged by the 1<sup>st</sup> respondent under an estate management contract. It further admits that some of the claimants worked for the 1<sup>st</sup> respondent on diverse dates and capacities until they were laid off in a lawful redundancy. It denies the allegation that the claimants were not paid their salary increments under the aforesaid CBAs. It further avers that any underpayment arising from the new CBAs were paid in arrears. It also avers that the claimants were paid all their terminal dues including severance pay and salary in lieu of notice based on the existing CBA. Finally it prayed for the suit to be dismissed with costs.

### **Evidence**

5. Rosemary Njeri Thiong'o testified as CW1 and she represented all the other claimants. She adopted her written statement dated 18/9/2021 and produced a bundle of 11 documents as exhibits. In brief she testified that the employer under paid their salary after new CBAs were concluded by the trade union in 2015 and 2017.
6. As a result, when their services were terminated they were not paid their correct terminal dues. The years used to calculate the dues were also reduced. They signed for the terminal dues without knowledge of the details as she did not know how to read English. They were just told to sign because the company is closing down. Their trade union was not involved in the redundancy process. The persons whose signatures appear as witnesses were not chosen by her to be her witnesses when she signed for the terminal dues.
7. On cross examination, she contended that all the other claimants were working with her at the respondent's farm and she knew all of them having worked there since 2002. She contended that the union knew about the redundancy but maintained that it was not involved in the redundancy exercise. She admitted that the claimants signed for their payment but maintained that she signed without knowledge of the details because they were told the company was closing down the farm.



8. She contended that they were not given any written notice and denied knowledge whether the labour officer was served with the same. She reiterated that the claim herein is for the period from the year 2015.
9. Mr. Robert Gacheru Waithera, former estate manager for the 2<sup>nd</sup> respondent, testified as RW1. He also adopted his written statement dated October 29, 2021 as his evidence and produced a bundle of 10 documents as exhibits. He stated that the 2<sup>nd</sup> respondent was engaged by the 1<sup>st</sup> respondent to manage its farm under an agreement which stipulated that the claimants were employees of the 1<sup>st</sup> respondent.
10. He further stated that in December 2019 the 1<sup>st</sup> respondent's shareholders passed a resolution to sub divide the land among the shareholders. As a result the management of the 2<sup>nd</sup> respondents met with the board of the 1<sup>st</sup> respondent and the workers on March 24, 2020 and communicated the said resolution and also that the farm would close down in 6 months' time. Thereafter RW1 wrote a notice to the claimants' trade union and copied to the labour officer, Murang'a.
11. RW1 further stated that claimants were required to confirm the terminal dues payable to them from October 2020 and they were each given clearance forms showing breakdown of the terminal dues payable to them before the actual payment was done. They also signed further document showing breakdown of service gratuity, salary arrears (2015, 2016, 2017 and 2018) and baggage allowance. The said payments were based on the 2017-2018 CBA.
12. He stated that the claimants signed the said clearance forms to confirm the payments due to them plus 2 years of service. They also signed for the actual amount collected. In total the workers were paid Kshs 7,097,594.00 as gratuity. They were also paid Kshs 2,281,440.00 as salary arrears for the year 2015, 2016, 2017 and 2018. A balance of Kshs 172,200 was not collected and it was deposited with the 1<sup>st</sup> respondent's Board for workers to collect.
13. The workers were also paid Kshs 372,200.00 for baggage allowance and a balance of Kshs 28,000.00 was again left with the 1<sup>st</sup> respondent's board for the concerned workers to collect. Therefore the total dues paid amounted to Kshs 9,248,834.00 but Kshs 200,200.00 was not collected and the concerned workers can go for it from the 1<sup>st</sup> respondent. He clarified that the Kshs 5000.00 baggage allowance was initially paid but later Kshs 1000 was paid to make it Kshs 6000 after the error was noted.
14. On cross examination, RW1 stated that the 2<sup>nd</sup> respondent started managing the 1<sup>st</sup> respondent in 1977. He reiterated that he paid the claimants' dues as per the CBA and the master roll and the claimants signed for the payment. He maintained that the claimants were paid as per CBA for 2015-2018 and clarified that there was further salary increment.
15. He contended that the pay for general work was Kshs 395 per day from 2018 which continued till August 2020 when they exited. He admitted that salary *in lieu* of notice was not paid because the claimant's union was served with notice. He maintained that the claimants were paid gratuity and relied on the master roll as evidence.
16. In the reexamination he reiterated that he used the 2017-2018 CBA to pay the salary arrears. He further reiterated that the claimants were notified of the redundancy in a meeting with the board and thereafter their trade union and labour officer were served with a notice for the termination. Finally he maintained that the claimants were paid the terminal dues as per the master roll produced herein.

### **Submissions**

17. It was submitted for the claimants that their salaries were under paid between 2015 and 2020 and the arrears were not paid upon termination of their employment. It was further submitted that the



- respondents failed to pay the claimants salary *in lieu* of notice and baggage allowance as provided in the CBA. It was further submitted that the respondents failed to pay severance pay to the claimants and instead paid service pay for less years than served.
18. In view of the foregoing default, it was submitted that the claimants are entitled to payment of salary *in lieu* of notice, severance pay, salary arrears and baggage allowances as computed in the schedule annexed to the claim. The court was also urged to award each claimant Kshs 100,000.00 as general damages for unfair labour practices.
  19. As regarding the clearance certificates signed by the claimants in respect of their final dues, it was submitted that the respondents did not plead discharge based on the said clearance certificates, or at all and as such the same cannot be used to defeat the claimants claim. It was urged that parties are bound by their pleadings and any evidence that goes beyond the pleading should be disregarded.
  20. Reliance was placed on the case of *Philip Osoe Ogutu v Michael Onyura Aringo & 2 others* (2013) eKLR, *Daniel Otieno Migore v South Nyanza Sugar Co.Ltd* (2018) eKLR and *IEBC & another v Stephen Mutinda Mule & 3 others* (2014) eKLR where the courts held that parties are bound by their pleadings and an evidence that go beyond the pleadings ought to be disregarded.
  21. It was further submitted that the said clearance certificated were not signed voluntarily and with full knowledge of what the payments therein constituted or were in respect of. Further the respondent was faulted for not explaining the certificates and their import to the claimants who were in any event illiterate. It was therefore submitted that the clearance certificates are voidable on account of misrepresentation as they do not demonstrate full payment to the claimants.
  22. Reliance was placed on the case of *Thomas De La Rue (K) Ltd v David Opondo Omutelema* (2013) eKLR and *Coastal Bottlers Ltd v Kimathi Mithika* (2018) eKLR where the Court of Appeal held that a court faced with a case of discharge agreement should address its mind upon the import of the agreement and secondly whether the same was voluntarily executed by the concerned parties.
  23. In the instant case the claimants allege that they were illiterate and they signed without full knowledge of the details of the certificates and their import. Their trade union was not involved and as such the claimants signed the certificate under coercion or undue influence from the respondents' officers who witnessed the signing by the claimants.
  24. On the other hand, it was submitted for the respondents that the claimants, their union and labour officer were notified of the intended redundancy and as such the termination of claimants' employment on account of redundancy was lawful. It was further submitted that there is evidence to prove the foregoing and that the claimants were paid all the terminal dues including salary arrears. It was further submitted that those few who did not collect their dues, they were left in the hands of the 1<sup>st</sup> respondent's Board of Directors for collection.
  25. As regards service gratuity, it was submitted that Clause 24.0 of the CBA gave different rates for different employees according to years of service. It was submitted that payment of gratuity was based on the master roll and some claimant were not found in the same.
  26. As regards baggage allowance, it was submitted that clause 25.0 of the CBA was complied with. Further, claimants were erroneously paid Kshs 5000 instead of Kshs 6000.00 but when the error was discovered, the claimants were paid the balance of Kshs 1000 as shown in the respondent's exhibit 2.
  27. Again, it was submitted that the claim for salary arrears for 2015-2020 is without merits because there was no CBA for 2019- 2020 but only the one for 2015- 2016 and 2017-2018. It was reiterated that the claimants were paid the said salary arrears as per the respondent's exhibit no.3, 5, 6, 7, 8, 9 and 10.



28. The claim for salary *in lieu of* notice was also opposed on ground that the claimants, their union and the labour office were served with notice for the redundancy and they agreed to the process.
29. Further it was submitted that the termination of the claimants' employment was fairly done and no law was contravened, hence their right to fair labour practices was not violated by the redundancy.
30. As regards the claim for certificate of service, the respondent contended that the claimants have admitted that they signed clearance certificate and therefore the entire claim is waste of court's time and it should be dismissed with costs.

### **Analysis and determination**

31. There is no dispute that some of the claimants were employed by the respondents until July 2020 when their services were terminated on account of redundancy. The issues for determination are:-
  - a. Whether the clearance certificates signed by the claimants discharged the respondents from the claims herein.
  - b. Whether the claimants' are entitled to the reliefs sought herein.

### **Clearance certificates**

32. The respondents' case is that they paid the claimants their final dues which they acknowledged by signing clearance certificates. It is further respondents' case that those employees who never collected their dues can still go for the same from the custody of the 1<sup>st</sup> respondents' Board of Directors. It was also argued that all the 92 claimants were not employees of the respondent as some were not in the master roll.
33. The claimants' case is that they never knew the full details and the import of the clearance certificates which they signed. CW1 alleged that she did not know how to read English when she signed the document. She just signed because everybody else was signing and they had been told that the farm was closing down. She also contended that their union was not involved in the redundancy process.
34. Some of the forms indicate payment of salary arrears and gratuity but others indicate gratuity payment only. Meaning that the claimants whose forms excluded the item of salary arrears, had already received the arrears before going for the gratuity. The proof of separate payment can be found in the documents filed by both sides.
35. Page 49 to 53 of the claimants' bundle of documents gives a schedule of payment of salary arrears for 2015-2018 for 33 employees for Irrigathi Estate including CW1 herein. The said employees are excluded from payment of salary arrears in the schedule appearing on page 46 of the said claimants bundle titled Kangema Farmnlands Limited September 2020 Irrigathi estate terminal benefits and arrears. Page 20 and 21 of the 2<sup>nd</sup> Respondent's bundle of documents contain schedule of payment of arrears for casual workers of Irrigathi estate where the payees including CW1 have appended their thumb or finger prints as signature. The figures on these schedule tally with the figures in the schedule of arrears in page 53 of the claimants' bundle.
36. The issue of baggage is without dispute that it ought to be Kshs 6,000.00 under the CBA. Some claimants were paid Kshs 5000.00 but there is evidence on page 18-19 and 26-28 of the 2<sup>nd</sup> respondents bundle to prove that the claimant were paid the balance of 1000.00. However, some never collected the balance but there is evidence that they are at liberty to go for it from the 1<sup>st</sup> respondent.



37. Having made the above analysis, I reiterate that as at the time the claimants signed the clearance certificate, they had received their baggage allowance and salary arrears for 2015-2018 or the salary arrears was received together with gratuity under the clearance certificate. It follows that by signing the certificate, the parties were fully aware of the imports of the document they were signing and they executed it voluntarily. The claimants signed the certificate with full knowledge that it was settling their claims with the respondents before they closed operation.
38. The allegation by CW1 that she signed the certificate without full knowledge of its meaning cannot be taken to represent all the 92 claimants. Only the claimant testified during the hearing and she did not state that all the 92 claimants were unable to read and understand English. If that was the case the same could have been included in the witness statement. That was not the case and CW1 only raised it during the hearing. Although no attempt was made to rebut that allegation, I will not be persuaded by the same because the CW1 is trying to stray beyond the claimants pleadings. It is an afterthought and quite prejudicial to the respondent.
39. Having rejected the attempt by CW1 to disown the clearance certificates, I must find that the certificate constitutes a binding contract between the claimants and the respondents. The employer made an offer to the claimants and they signed acceptance. Therefore the claimants are estopped from bringing this suit against the employer pursuant to the discharge contained in the clearance certificates they signed.
40. One more thing, I have noted from the CBAs produced as exhibits that clause 24 of the CBA which deals with service gratuity is inapplicable when the termination is through redundancy. Clause 26 of the CBA provides that:-
- “(e) In the event of redundancy clause 24 on service gratuity will no longer be applicable.”
41. The benefits payable under clause 24 (service gratuity) is higher than severance pay under clause 26. Under clause 24, gratuity pay range from 20-24 days’ pay per year depending on the years of service while severance pay under clause 26 is a flat rate of 21 days’ pay per year of service. In this case the employer made an offer to pay gratuity instead of severance pay and the claimants agreed and discharged the employer from any further claims. This corroborates my earlier finding that the clearance certificates signed by the claimants constituted a binding contract which benefited them more.
42. The clearance certificate form appears as follows;-
- “Re: Final dues on employment termination
- ...you are entitled to payment on termination calculated as follows:-
- .....
- Please sign the clearance section below to indicate your agreement to the above and to acknowledge receipt of the net amount due.
- Clearance certificate
- I.....hereby agree that I have received the amount of Kshs.... from.....being full and final settlement of all my dues and claims from the estate upon termination of employment, I undertake not to make any further claims against the said estate.
- ID.....



Sign .....

September 9, 2020

Witnessed by

1. Name.....  
ID No.....  
Signature
2. Name.....  
ID No.....  
Signature.....”

43. Having accepted the above offer by signing the claimants were bound by the settlement agreement unless there was evidence of existence of a vitiating factor. The court finds that there was no vitiating factor pleaded and proved herein. The CW1 alleges that she was not literate in English. She however signed the clearance certificate. No other claimant denied that they could read and understand English. In any event the claimant signed another document for the actual payment where they fixed their finger prints between September 10, 2020 and October 7, 2020 on the master roll. They never protested signing the master roll subsequent to signing of the clearance certificate.

### Reliefs

44. Section 40 of the *Employment Act* provides that upon redundancy an employee is entitled to salary *in lieu of* notice, accrued leave and severance pay. Under the CBA the claimants were further entitled to baggage allowance and salary arrears.

45. In this case there is evidence to show that the claimants were paid salary arrears, baggage allowance and gratuity only. They were not entitled to severance pay and gratuity at the same time under clause 24 and 26 of the CBA. They accepted gratuity and waived severance pay. The claims for salary in lieu of notice is merited but in view of the finding above that the clearance certificates signed by the claimants discharged the employer from further claims, the reliefs sought herein including salary in lieu of notice cannot issue. The said discharge and undertaking estops the claimants who signed the same from seeking reliefs in this court.

46. I gather support from *Thomas De La Rue (K) Ltd v David Opondo Omutelema* (2013) eKLR where the Court of Appeal cited:-

“We would agree with the trial court that a discharge voucher per se cannot absolve an employer from statutory obligation and that it cannot preclude the industrial court from enquiring into the fairness of a termination.

...The court has in each and every case, to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed when the employee was seized of all the relevant information and knowledge.”

47. Again in the *Coastal Bottlers Ltd v Kimathi Mithika* (2018) eKLR the Court of Appeal held that;-

“Whether or not a settlement agreement of discharge voucher binds a party from making further claim depends on the circumstances of each case. A court faced with such an issue,



in our view, should address its mind firstly upon the import of such a discharge/agreement; and secondly whether the same was voluntarily executed by the concerned parties.”

48. The claimants were aware that the company was closing down and that it was paying terminal dues to the exiting employees. Those claimants who signed knew that by signing the clearance certificates they were agreeing to accept the terminal dues computed thereon as their final payment from the dying company and that they were not going to raise other claims thereafter.
49. The court notes from the respondents’ bundle of exhibits that a number of the claimants were either strangers to the respondents or they were former employees who deserted employment before the redundancy was declared. Such defence was not rebutted and therefore even if they never signed any clearance certificate their case fails because they never testified in this case to prove their claims. The evidence by CW1 also did not establish that the said claimants were terminated on account of redundancy in July 2020.
50. In view of the findings and observations made herein above, the suit fails and it is dismissed with no costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 9TH DAY OF FEBRUARY, 2023.**

**ONESMUS N MAKAU**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N. MAKAU**

**JUDGE**

