



Esakwa & 14 others v Mwenda (Sued in his Capacity as the President of Football Kenya Federation) (Cause 1370 of 2016) [2023] KEELRC 2461 (KLR) (17 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2461 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1370 OF 2016
B ONGAYA, J
OCTOBER 17, 2023**

BETWEEN

MICHAEL ESAKWA 1ST CLAIMANT
JOSEPH O. AGOLA 2ND CLAIMANT
IGANZA PAMELA 3RD CLAIMANT
SAMSON CHEROP 4TH CLAIMANT
RAPHAEL O. MAWARO 5TH CLAIMANT
ROSE GACHERI 6TH CLAIMANT
EVANS RONO 7TH CLAIMANT
DAVID J. AGINGA 8TH CLAIMANT
LEONARD K. ONKOBA 9TH CLAIMANT
SOPHIA KWAMBOKA 10TH CLAIMANT
JUSTUS N. MUTUNGA 11TH CLAIMANT
MORRIS MAWIRA NYAGA 12TH CLAIMANT
EDWARD LUMBUGU 13TH CLAIMANT
DOMINIC MOUTI MICHIEKA 14TH CLAIMANT
LORDVIC ADUDA 15TH CLAIMANT

AND

NICK MWENDA (SUED IN HIS CAPACITY AS THE PRESIDENT OF FOOTBALL KENYA FEDERATION) RESPONDENT



JUDGMENT

1. The claimants filed the Memorandum of claim on July 14, 2016 through Obura Mbeche & Company Advocates. The claimants prayed for judgment against the respondent for orders:
 - a. That the respondent pays the claimants the salary arrears and payable as set out at the table under paragraph 1 in the memorandum of claim within seven (7) days of the court's order, failure of which the respondent be cited for contempt of court.
 - b. That the claimants be entitled to interest on the salaries due to them as set out at the table under the said paragraph 1 as above calculated at the rate of 14% from the dates such salaries fell due on a monthly basis until payment in full. Such payment to be paid together with salaries ordered to be paid as per paragraph (a) above.
 - c. That the claimants be paid general damages at the rate of Kshs. 2 million per claimant for breach of their constitutional rights under articles 30(1); 41(2) (a) and 43 of the Constitution.
 - d. A mandatory injunctive order be issued against the respondent commanding him to pay the claimants salaries for the month of July 2016 and for future months subsequent thereto.
 - e. Costs of the suit be granted to the claimants.
 - f. Such other or further orders as the honourable court may deem fit to grant.
2. The response to statement of claim was filed on August 19, 2016 through Sila Munyao & Company Advocates. The respondent prayed for the following orders:
 - a. An order dismissing the claim of the claimant.
 - b. Special damages as set out in paragraph 9 of the statement of response.
 - c. Costs of the suit and interest at court rate;
3. On July 2, 2019 a notice of change was filed by W M Njagi & Associates Advocates replacing the firm of Obura Mbeche & Co Advocates as acting for the Claimants.
4. On November 29, 2019 consents on behalf of the 7th, 13th, 5th, 15th, and 2nd claimants were filed through Sila Munyao & Co Advocates, and signed by counsel for the claimants.
5. That by a notice of motion filed on December 14, 2021 the firm of Obura Mbeche & company advocates, prayed that the court be pleased to set aside, vacate, vary and or review the consents filed on November 29, 2019 in respect of the 2nd, 5th, 7th and 13th claimants.
6. That by a ruling delivered on September 29, 2022, the Court (Dr Jacob Gakeri J) allowed the notice of motion application dated and filed on December 14, 2021. The 15th claimant's case has therefore been determined by the consent filed on November 29, 2019.
7. The claimants' case was that they were employees of the respondent having been employed on diverse dates.
8. The respondent is the President of the Football Kenya Federation (hereinafter referred to as "Federation") an organization formerly registered under the Societies Act Cap 108 of the laws of Kenya but now to be registered under the Sports Act No. 25 of 2013. Annexed to the statement of claim and marked Appendix 2 is the certificate of registration of the Federation.



9. The claimants state that the respondent is sued as an official of the Federation and also pursuant to article 37 of the federation's constitution.
10. It is the claimants' case that, with the knowledge of the respondent, demonstrated in his letter dated 13.02.2016, their salaries went unpaid by the federation, despite reminders written to the respondent by the 1st claimant on 14.03.2016 and 30.03.2016.
11. That upon assuming office the respondent wrote a letter dated 13.02.2016 to Mr. Jack Oguda the then CEO of the Kenya Premier League (KPL) requesting for funds amounting to Kshs 5,885,020 so as to settle the claimant's salary arrears. That KPL remitted a total of Kshs 3,252,800 to the respondent, but as at March, 2016 the respondent had not utilized the amount to offset the claimant's salary arrears.
12. That on or about 29.04.2016 the claimants upon reporting on duty, found that the respondent's premises had been locked.
13. That the claimants through their counsel on record wrote a demand letter to the respondent, demanding for their salaries, to which a response was received, wherein the respondent denied the employment relationship alleged by the claimants as well as the failure to pay salaries.
14. On the part of the respondents it is argued the claimants are not and have never been the federation's employees, the respondent denied knowledge of the claimant's entitlement to the gross salaries or salary arrears for any outstanding periods.
15. The annexed employment contract of the 1st claimant marked appendix 1a stipulates at paragraph 12 thus:

“ 12. Resolution of Disputes

.... if, after thirty (30) days from the commencement of such informal negotiations Football Kenya Federation and the Secretary General have been unable to resolve amicably a contract dispute, either party may require the dispute be referred for resolution and arbitration at the centre for arbitration & dispute resolution in accordance with the *Arbitration Act* laws of Kenya”

16. The respondent argues that this court lacks jurisdiction to hear and determine any dispute arising from the said contract of employment and urges the court to refer the 1st claimant's dispute to arbitration as provided for by the said contract.
17. The respondent further states that the employment contracts contained in the documents marked and annexed to the statement of claim as appendix 1A to 1L are forgeries and have been prepared in an effort to defraud the respondent.
18. Additionally, the respondent states that in the alternative, that the claimants have absconded from work since 13.02.2016, when the respondent reported to office, and are therefore not entitled to a salary during this period of absence, and as such they owe the respondent salaries in lieu of notice for termination of their employment contracts.
19. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
20. To answer the 1st issue, the Court returns that by the respondent's own letter dated 13.02.2016, the respondent has shown that the claimants were employees of the FKF and as per annexed payroll. The Court finds that parties were in a contract of service. In any event the claimants' appointment letters



have been exhibited showing that the claimants were employed by the respondent's FKF. The parties had agreed to an order at the hearing that the documents filed for claimants are deemed produced and admitted as filed. The employment relationship is therefore found duly established.

21. To answer the 2nd issue, the Court returns that the claim is for salary arrears. By the letter dated 13.02.2016 signed by the respondent it was acknowledged that the salaries as claimed were owed to the claimants. There is no evidence that the salaries were subsequently paid. The Court returns that the claimants are entitled to the salaries except the 15th claimant who has since settled the dispute by way of a consent filed in Court.
22. To answer the 3rd issue, the Court returns that in view of the admitted indebtedness to the 1st claimant, the arbitration clause now being invoked against the 1st claimant's suit is a mere afterthought. The Court will not act in vanity to order a referral to arbitration in circumstances that obviously there is no dispute in view of the cited admission. The claimants have succeeded and are entitled to costs of the suit.
23. To answer the 4th issue, the Court returns that the claimants have particularised their respective claims of salary arrears as duly admitted per the evidence on record. There is no established failure to specifically plead and prove the special damages being the salary arrears as submitted for the respondent. The suit will succeed.
24. To answer the 5th issue, the Court returns that once the salary arrears have been awarded, the contractual obligations are thereby fully satisfied. The claimants have not established a justifiable cause for award of general damages on account of alleged violation of article 30 (1) of the *Constitution* about freedom from servitude; article 41(2)(a) on fair remuneration; and article 43 on economic and social rights. The finds that upon material on record, the claimants have not established violations as alleged. In essence, the Court returns that the dispute was plainly about payment of the contractual salary arrears.
25. In conclusion, judgment is hereby entered for the 1st to 14th claimants and against the respondent for:
 1. The respondent to pay the claimants the salary arrears as follows:
 - a. Michael Esakwa Kshs. 3, 300, 000.00.
 - b. Joseph O. Agola Kshs. 2, 500, 000.00.
 - c. Iganza Pamela Kshs. 2, 290, 695.00.
 - d. Samson Cherop Kshs. 1, 504, 987.00.
 - e. Raphael O. Mawaro Kshs. 1, 112, 133.00.
 - f. Rose Gacheri Kshs. 871, 695.00.
 - g. Evans Rono Kshs. 712, 987.00.
 - h. David Aginga Kshs.395, 615.00.
 - i. Leonard K. Onkoba Kshs.330, 000.00.
 - j. Sophia Kwamboka Kshs.472, 560.00.
 - k. Justus Nzioka Mutunga Kshs. 330, 000.00.
 - l. Morris Mawira Nyaga Kshs. 165, 000.00.
 - m. Edward Lumbugu Kshs. 880, 000.00.



- n. Dominic Mouti Micheka Kshs. 160, 000.00.
2. The amount in order (1) above be paid by December 1, 2023 failing interest to be payable thereon from the date of filing the suit until full payment.
3. The respondent to pay the claimants' costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS TUESDAY 17TH OCTOBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

