



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 271 OF 2019**

***(Before Hon. Lady Justice Maureen Onyango)***

**KENYA UNION OF COMMERCIAL FOOD**

**AND ALLIED WORKERS.....CLAIMANT**

**VERSUS**

**PREMIER FLOUR MILLS.....RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the Labour Relations Act to represent employees in the sectors set out in its registered constitution.
2. The Respondent is a limited liability company registered under the Companies Act and engages in flour milling and marketing within the Republic of Kenya.
3. The Claimant and the Respondent have a valid recognition agreement and negotiated several collective bargaining agreements, the last of which was to expire on 31<sup>st</sup> December 2016.
4. It is the Claimant's case that the Respondent unilaterally stopped paying salaries for the 57 grievants named in the claim on whose behalf this suit has been instituted.
5. Upon failure of the Respondent to pay wages to the grievants the Claimant first attempted to hold meetings with the Respondent which did not materialise. It thereafter reported a trade dispute to the Cabinet Secretary, Ministry of Labour under Section 62 of the Labour Relations Act. The dispute was accepted and Mr. Okelo, Labour Officer, headquarters was appointed as conciliator.
6. The Conciliator invited the parties for a joint conciliation meeting on 1<sup>st</sup> August 2018 by letter dated 19<sup>th</sup> July 2018, which appears not to have materialised.
7. The Conciliator again by letter dated 25<sup>th</sup> September 2018 invited the parties for a conciliation meeting on 22<sup>nd</sup> October 2018. However the Respondent by letter dated 25<sup>th</sup> September 2018 wrote to the Claimant and requested for a meeting to discuss wages and related matters.
8. On 13<sup>th</sup> December, 2018 both parties met before the conciliator but were not able to agree on the matter. The Respondent pointed out that he had closed the Company in December, 2018 but confirmed it had neither terminated nor declared the grievants redundant. The Claimant therefore maintained that accumulated wages effective from February, 2018 to date was payable since employees had not been informed that their employment had ceased. That the Employment contract was indeed intact and enforceable.
9. On 18<sup>th</sup> December, 2018 the conciliator released his brief report and invoked Section 69 of the Labour Relations Act, 2007 to refer the matter to Court.
10. It is after this that the Claimant filed the instant suit on 25<sup>th</sup> April 2019. In the claim dated 2<sup>nd</sup> April 2019 the Claimant seeks the following remedies on behalf of the grievants –

*i. That the Hon. Court find wages for the grievants from February, 2018 to date due and owing.*

*ii. The Hon. Court to Order and Award for payment of all withheld wages from February, 2018 to date and or as per Appendix PN*

13 attached.

iii. That the wages be paid within 14 days of the Court's Judgment.

iv. That Statutory deductions and remittances envisaged in Section 19 (f) of Employment Act, 2007 be effected.

v. That Employment contracts between the Respondent and the grievants be found binding and not having been terminated in any way and at any one time.

ii. That cost be provided.

11. The Respondent who was properly served with summons to enter appearance and memorandum of claim instructed the firm of Kimani and Michuki Advocates who entered appearance on 2<sup>nd</sup> July 2019. The Respondent however did not file a defence and the suit proceeded undefended.

12. In view of the issues raised in the memorandum of claim and the fact that the suit was undefended the Court directed that the same be disposed of by way of pleadings, witness affidavits and written submissions. Again, the Respondent was served but did not file any submissions or attend Court on the mention dates.

### **Determination**

13. The averments in the suit herein are not contested. In deed it is on record that the Respondent did not deny failing to pay wages. As is stated in the pleadings and witness affidavits and statements, the Respondent's Managing Director and officers were quite amenable during all the engagements with the Claimant and workers and continued promising to pay outstanding wages which it did not.

14. The only issue for determination is therefore whether the Claimant is entitled to the orders sought in the memorandum of claim.

15. It is the Claimant's submission that the Respondent started experiencing difficulties in paying salaries in January 2018 and several operations ceased. That in February 2018 the grievants did not receive their salaries but the Respondent's director reiterated earlier communication to the grievants assuring them that everything was under control and seeking their indulgence.

16. That the grievants continued reporting to work daily until October 2019 when a new security firm was engaged by the Respondent who denied the grievants entry into the Respondent's premises.

17. The Claimant submits that the Constitution of Kenya under Article 41(1) and (2) provides that;

**(1) Every person has the right to fair Labour practices.**

**(2) Every worker has the right —**

**(a) to fair remuneration;**

**(b) to reasonable working conditions;**

18. It further submits that failure to pay employees' wages in time amounts to unfair labour practices and violates the above constitutional provision on reasonable working conditions.

19. Section 17(1) of the Employment Act, 2007 provides that;

**(1) Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly, in the currency of Kenya -**

**(a) in cash;**

**(b) into an account at a bank, or building society, designated by the employee;**

**(c) by cheque, postal order or money order in favour of the employee; or**

**(d) in the absence of an employee, to a person other than the employee, if the person is duly authorised by the employee in writing to receive the wages on the employee's behalf.**

20. Payment of wages is an employee's right and failure to pay such wages amounts to unfair labour practices unconstitutional.

21. The Respondent's failure to pay the grievants their salaries, is a contravention of the fundamental terms of employment contract that entitled the grievants the repudiate the employment contracts.

22. In the case of **Omollo Obuom v Catholic Diocese of Nakuru [2015] eKLR** the Court held that;

*"Payment of wages as agreed and on due dates is one of the essential terms of an employment contract. Failing to pay agreed wages goes to the root of the contract of employment. The Respondent was in breach when it did not pay wages according to the agreed terms."*

23. It is the Claimant's submission that the Respondent's Managing Director did not notify the grievants to stop reporting for duty and the grievants continued assuming that their salaries would be paid. That the Respondent never denied owing the salaries and did not inform the grievants about their fate. That they have a legitimate expectation to be paid.

24. The Claimant demands payment of wages for the workers from February 2018 to October 2019 and has tabulated the amounts due for every grievant which amounts to Kshs.22,666,420/-.

25. In view of the fact that it is not contested that the employees reported for work until October 2019 and that the Respondent all the while promised to settle the arrears of salaries, and in view of the fact that the Respondent was served with the submissions including the tabulation of arrears but did not file any objection to the same, I enter judgment for the Claimant on behalf of the grievants in the sum of Kshs.22,666,420/- as tabulated in the computation sheet filed with the submissions.

26. The said amount shall attract interest from date of judgement.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 18<sup>TH</sup> DAY OF FEBRUARY 2022**

**MAUREEN ONYANGO**

**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> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**